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Thursday
June 4, 1998

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Presidential Documents

Title 3—

The President

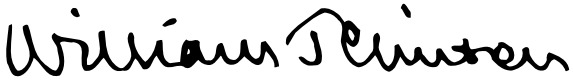
Presidential Determination No. 98–23 of May 23, 1998

Assistance Program for the Government of the Russian Federation

Memorandum for the Secretary of State

Pursuant to section 577(a) of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1998 (Public Law 105–118), I hereby determine and certify that the Government of the Russian Federation has implemented no statute, executive order, regulation, or similar government action that would discriminate, or would have as its principal effect discrimination, against religious groups or religious communities in the Russian Federation in violation of accepted international agreements on human rights and religious freedoms to which the Russian Federation is a party. During the period under review, the Government of Russia has applied the new Russian Law on Religion in a manner that is not in conflict with its international obligations on religious freedom. However, this issue requires continued and close monitoring as the Law on Religion furnishes regional officials with an instrument that can be interpreted and used to restrict the activities of religious minorities.

You are authorized and directed to notify the Congress of this determination and to arrange for its publication in the **Federal Register**.



THE WHITE HOUSE,
Washington, May 23, 1998.

Memorandum of Justification Regarding Determination Under Section 577(a) of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1998 (Public Law 105–118)

Summary: During the period under review, the Government of Russia has applied the new Law on Religion in a manner that is not in conflict with its international obligations on religious freedom. To the extent that violations of internationally recognized rights have occurred, they have been the consequence of actions taken by regional or local officials and do not appear to be a manifestation of federal government policy.

At the same time, the Law on Religion furnishes regional officials with an instrument that can be interpreted and used to restrict the activities of religious minorities. Thus, this issue requires continued and close monitoring.

1. The New Law on Religion: On October 1, 1997, the Russian Federation enacted a restrictive and potentially discriminatory law ''On Freedom of Conscience and Religious Associations'' (Law on Religion). The new law is complex, with many ambiguous and contradictory provisions.

The law accords more favorable legal status and privileges to religions that have been present in Russia for an extended period of time. New religious associations must wait 15 years before acquiring all of the rights of a juridical person, such as the right to own property and open a bank account, as well as the right to engage in a range of religious activities. Article 27(3) of the law is also controversial because it applies certain aspects of the 15-year rule to religious organizations that enjoyed full legal status under prior legislation. Portions of the law appear inconsistent with Russia's constitution and civil code as well as its international commitments. Some Russian officials had indicated that the implementing regulations would clarify ambiguities, but the regulations share the ambiguities of the law.

2. Key Concern: Through its acceptance and accession to international human rights instruments, the Government of Russia has committed itself to respecting freedom of association and assembly and, more specifically, freedom of thought, conscience and religion, including freedom to change religion or belief and freedom to manifest religion or belief in worship, teaching, practice and observance. The Law on Religion is of great concern because it could be applied to restrict the ability of communities of believers to establish organizations with full legal rights.

3. Application: Over the past year, Russian government officials, including President Yeltsin and then-Prime Minister Chernomyrdin, pledged to Vice President Gore that the new law would not result in any erosion of religious freedom in Russia. Officials in the Presidential Administration and the Cabinet of Ministers have echoed and clarified Yeltsin's promises. In particular, the Ministry of Justice has adopted a permissive approach to registering religious organizations with full legal rights, effectively bypassing elements of the 15-year rule. In addition, Presidential Administration officials have announced the establishment of two consultative mechanisms to facilitate government interaction with religious communities and to monitor application of the new law.

The Presidential Administration and the Ministry of Justice have also promised to support efforts now underway by nongovernmental organizations to challenge the constitutionality of the law's retroactive provisions (article 27(3)) before the Constitutional Court. Officials in these organs have indicated their view that article 27(3) violates Russia's constitution.

Despite the federal government's efforts, however, a number of regional officials continue to violate rights of minority religious organizations, in some cases citing the new federal law. Based on anecdotal, limited information we have to date, we are aware of about 25 cases of harassment between the date of enactment of the Law on Religion and early May 1998.

4. Evaluation: Local and regional abuses of religious rights raise serious concerns, especially if the new law is being used by some officials to justify such actions. At the same time, reported incidents represent a relatively small number of problems when viewed against the size of the country and complexity of political and social changes underway. Moreover, we have no evidence to suggest that these local actions result from a deliberate policy of the federal government. Finally, these incidents are, unfortunately, consistent with a pattern of local and regional harassment and restrictions on minority religious communities that was clearly discernible prior to passage of the law.

Regional and local abuses reflect a larger problem in Russia—which is also evidenced in matters ranging from tax collection to elections to law enforcement—of the center exercising weak control over events throughout the regions. We believe local officials have taken advantage of a poorly developed legal tradition and weak oversight to advance intolerant ideas at odds with Russia's constitution and the flexible and fair interpretation of the Law on Religion articulated by the central authorities.

Nevertheless, it remains to be seen how the Law on Religion's restrictions will be interpreted in the longer run, and whether the federal government will respond appropriately over time to cases in which local officials apply the law in a manner at odds with Russia's international commitments. Given the political commitments made and constitutional positions taken by the central government, the fact that the implementing regulations are only now making their way to regional officials and the fact that federal officials are only now establishing mechanisms for addressing differences in interpretation, we believe that the relatively small number of local incidents does not require a finding that the ''Government of the Russian Federation'' has implemented discriminatory measures. Similarly, we believe it would be premature to conclude that the law's restrictions, as implemented, constitute violations of Russia's international obligations.

5. U.S. Engagement: Freedom of conscience has been a central element of the U.S. bilateral agenda with Moscow since the early 1970's, and the Law on Religion has been the subject of numerous high-level communications between the Administration and the Russian Government, involving the President, the Vice President, Secretary Albright, and other senior U.S. officials.

The Department of State and the U.S. Embassy in Moscow will continue to maintain close contact with religious communities and NGOs to assess the effects of the new law and solicit views on appropriate responses. In addition, we will continue to make clear to the Russian Government the requirements of Section 577(a) of the Foreign Operations Appropriations Act for FY 1998 and urge that the federal authorities both reverse discriminatory actions taken at the local level and, when necessary, reprimand the officials at fault. We will also encourage federal action to ensure that regional laws do not contradict Russia's constitutional and international guarantees of religious freedom, and continue to make clear our view that the federal law should ultimately be changed so it cannot be used to justify curtailing religious freedom in Russia.

[FR Doc. 98–14991
Filed 6–3–98; 8:45 am]
Billing code 4710–10–M

Rules and Regulations

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

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FEDERAL RESERVE SYSTEM

12 CFR Part 225

[Regulation Y; Docket No. R–0948]

Leverage Capital Standards: Tier 1 Leverage Ratio

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) is amending its Tier 1 leverage capital standard for bank holding companies. The effect of this final rule is to simplify the Board's leverage capital standard for bank holding companies and to incorporate the market risk capital rule into the leverage standard.

EFFECTIVE DATE: June 30, 1998.

FOR FURTHER INFORMATION CONTACT: Norah Barger, Assistant Director (202/452–2402), Barbara Bouchard, Manager (202/452–3072), T. Kirk Odegard, Financial Analyst (202/530–6225), Division of Banking Supervision and Regulation. For the hearing impaired *only*, Telecommunication Device for the Deaf (TDD), Diane Jenkins (202/452–3544), Board of Governors of the Federal Reserve System, 20th and C Streets, N.W., Washington, D.C. 20551.

SUPPLEMENTARY INFORMATION:

Background

On October 27, 1997, the Board issued a proposal to amend its risk-based and Tier 1 leverage capital standards for bank holding companies (62 FR 55692). This proposal stemmed in large part from an interagency effort to streamline capital standards pursuant to section 303 of the Riegle Community Development and Regulatory Improvement Act of 1994 (CDRI Act).[1] That Act required the Agencies to review their own regulations and written policies and to streamline those regulations where possible, and also required the Agencies to work jointly to make uniform all regulations and guidelines implementing common statutory or supervisory policies. To fulfill the section 303 mandate, the Agencies reviewed their capital standards for banks and thrifts to identify areas where they had substantively different capital treatments or where streamlining was appropriate. As a result of these reviews, the Agencies proposed conforming amendments to their risk-based and leverage capital standards for banks and thrifts (62 FR 55686) concurrently with the Board's proposal for bank holding companies on October 27, 1997.

While not technically mandated under section 303 of the CDRI Act, the Board decided to amend the risk-based and leverage capital standards for bank holding companies to make them more uniform with those for banks and thrifts. The concurrently issued interagency and Board proposals were identical with respect to risk-based capital standards,[2] but differed with respect to Tier 1 leverage capital standards. Specifically, the Board's proposal for bank holding companies incorporated the Board's market risk capital rule, which became effective this year. The Agencies are currently working to complete a final rule based on the proposal for banks and thrifts. The Board intends to implement amendments to the risk-based capital standards for bank holding companies concurrently with the implementation of the interagency CDRI Act rulemaking for banks and thrifts. Because the Board's proposal to amend the leverage capital standard for bank holding companies differed from the interagency proposal for banks and thrifts, however, the Board has decided that it is not necessary to wait for the completion of the interagency rulemaking to finalize its rulemaking on the bank holding company leverage capital standard.

The Board's Proposal

The Board's proposal established a minimum Tier 1 leverage ratio (Tier 1 capital to total assets) of 3.0 percent for all bank holding companies that are rated a composite ''1'' under the BOPEC[3] rating system or that have implemented the risk-based capital market risk measure set forth in the Board's capital adequacy guidelines (12 CFR 225, Appendix E). All other bank holding companies must maintain a minimum Tier 1 leverage ratio of 4.0 percent. Higher capital ratios could be required for bank holding companies that had significant financial and/or operational weaknesses, had a high risk profile, or were undergoing or anticipating rapid growth. Prior to implementation of this final rule, bank holding companies that were not ''1'' rated under the BOPEC system were required to maintain a minimum leverage ratio of 3.0 percent, plus an additional 100 to 200 basis points. This proposal differed from the interagency proposal for banks in that the interagency proposal did not lower the minimum leverage capital standard for banks that had adopted the market risk capital rule.

Comments Received

The Board received three public comments on the Tier 1 leverage component of the bank holding company proposal (two from bank holding companies and one from an industry trade group), all of which supported the proposal.[4] Two of these commenters supported immediate adoption of the proposal to reduce regulatory burden on bank holding companies engaged in significant trading activities. Moreover, these commenters encouraged the Board to discontinue entirely the use of the leverage ratio as an indicator of safety and soundness for such institutions. They argued that the leverage ratio was an inadequate measure of relative risk, and was unnecessary in light of strict international risk-based capital standards. Moreover, these commenters

[1] The Board has worked with the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, and the Office of Thrift Supervision (collectively, the Agencies) to fulfill the CDRI Act section 303 mandate.

[2] Both proposals would make uniform the risk-based capital treatment of construction loans on presold residential properties, loans secured by junior liens on 1- to 4-family residential properties, and investments in mutual funds.

[3] The BOPEC rating system is used by supervisors to summarize their evaluations of the strength and soundness of bank holding companies in a comprehensive and uniform manner.

[4] In addition, a bank holding company commenting on the proposal for banks and thrifts expressed support for the Tier 1 leverage component of the bank holding company proposal.

argued that the existence of the leverage capital requirement placed domestic institutions at a competitive disadvantage relative to broker-dealers and foreign banking organizations that were not subject to minimum leverage requirements. In the absence of elimination of the leverage ratio, however, these commenters supported the proposed reduction of the minimum required leverage ratio for bank holding companies that have adopted the market risk capital rule. These commenters also requested that the Agencies: (a) apply the leverage ratio reduction to banks that have adopted the market risk capital rule; and (b) exclude the leverage ratio requirement entirely from the prompt corrective action guidelines for banks.

Final Rule

The Board has determined to adopt a final rule that is consistent with the original proposal with respect to the bank holding company leverage capital standard. The final rule provides that the minimum Tier 1 leverage ratio for the most highly-rated bank holding companies, as well as those that have implemented the market risk capital rule, is 3.0 percent. The minimum leverage ratio for all other bank holding companies is 4.0 percent. The final rule also incorporates certain changes in wording to adjust for these new provisions. These stylistic changes are not intended to alter in any substantial way the other provisions of the leverage capital standard for bank holding companies. The Board acknowledges commenter concerns about the usefulness of the leverage ratio as a supervisory tool for those institutions that have adopted the market risk capital measure. Although further modifications to the leverage ratio are beyond the scope of this final rule, the Board may consider whether the leverage requirements should be further modified in the future.

Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act, the Board has determined that this final rule would not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The effect of the final rule will be to reduce regulatory burden on bank holding companies by simplifying the Tier 1 leverage standard. The most highly-rated bank holding companies, as well as those that have adopted the market risk capital rule, will be required to meet a lower leverage capital standard under this rule. Accordingly, a regulatory flexibility analysis is not required.

Paperwork Reduction Act

The Board has determined that the final rule does not involve a collection of information pursuant to the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Deferred Effective Date

The Board has determined that the delayed effective date requirements of the Administrative Procedure Act (5 U.S.C. 553) do not apply with respect to this final rule. A delayed effective date is not required with respect to agency action that relieves a restriction (5 U.S.C. 553(d)(1)). Because this final rule would relieve a restriction on certain bank holding companies and would not impose any new restrictions on bank holding companies, the Board concludes that the requirements of section 553 do not apply to this final rule.

List of Subjects in 12 CFR Part 225

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

For the reasons set forth in the preamble, part 225 of chapter II of title 12 of the Code of Federal Regulations is amended as set forth below.

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

1. The authority citation for part 225 is revised to read as follows:

Authority: 12 U.S.C. 1817(j)(13), 1818, 1828(o), 1831i, 1831p–1, 1843(c)(8), 1844(b), 1972(1), 3106, 3108, 3310, 3331–3351, 3907, and 3909.

2. In appendix D to part 225, section II.a. is revised to read as follows:

Appendix D To Part 225—Capital Adequacy Guidelines for Bank Holding Companies: Tier 1 Leverage Measure

* * * * *

II. * * *

a. The Board has established a minimum ratio of Tier 1 capital to total assets of 3.0 percent for strong bank holding companies (rated composite ''1'' under the BOPEC rating system of bank holding companies), and for bank holding companies that have implemented the Board's risk-based capital measure for market risk as set forth in appendices A and E of this part. For all other bank holding companies, the minimum ratio of Tier 1 capital to total assets is 4.0 percent. Banking organizations with supervisory, financial, operational, or managerial weaknesses, as well as organizations that are anticipating or experiencing significant growth, are expected to maintain capital ratios well above the minimum levels. Moreover, higher capital ratios may be required for any bank holding company if warranted by its particular circumstances or risk profile. In all cases, bank holding companies should hold capital commensurate with the level and nature of the risks, including the volume and severity of problem loans, to which they are exposed.

* * * * *

By order of the Board of Governors of the Federal Reserve System, May 29, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98–14808 Filed 6–3–98; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–09–AD; Amendment 39–10558; AD 98–12–01]

RIN 2120–AA64

Airworthiness Directives; Pilatus Aircraft Ltd. Models PC–6, PC–6/A, PC–6/B, and PC–6/C Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Pilatus Aircraft Ltd. (Pilatus) Models PC–6, PC–6/A, PC–6/B, and PC–6/C series airplanes equipped with turbo-prop engines. This AD requires modifying the fuel system to improve the venting between the collector tank, the main wing tanks, and the engine. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Switzerland. The actions specified by this AD are intended to prevent engine fuel starvation during maximum climb and descent caused by poor fuel tank venting with low fuel levels, which could result in a loss of engine power during critical phases of flight.

DATES: Effective July 13, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 13, 1998.

ADDRESSES: Service information that applies to this AD may be obtained from Pilatus Aircraft Ltd., Customer Liaison Manager, CH–6370 Stans, Switzerland; telephone: +41 41–6196 233; facsimile: +41 41–6103 351. This information may also be examined at the Federal

Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–09–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Roman T. Gabrys, Aerospace Engineer, FAA, Small Airplane Directorate, Airplane Certification Service, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone: (816) 426–6934; facsimile: (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Pilatus PC–6, PC–6/A, PC–6/B, and PC–6/C series airplanes was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on March 25, 1998 (63 FR 14385). The NPRM proposed to require modifying the airplane's fuel venting system. Accomplishment of the proposed action as specified in the NPRM would be in accordance with Pilatus PC–6 Service Bulletin No. PC–6–SB–171, dated October 18, 1995.

The NPRM was the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Switzerland.

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

The FAA's Determination

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

Differences Between the Service Information, the Federal Office for Civil Aviation (FOCA) AD, and This AD Action

The manufacturer recommends the modification of the fuel venting system and the insertion of a temporary revision to the AFM, and FOCA of Switzerland requires the temporary AFM insertion and the modification of the fuel venting system for airplanes operated in Switzerland. The FOCA of Switzerland requires the AFM revision be accomplished prior to further flight and requires the revision to remain in the AFM until the venting modification is accomplished. The FOCA of Switzerland additionally requires that the modification be accomplished within 90 days from receipt of the service bulletin.

The FAA will not require insertion of the temporary AFM revision; however, the FAA will require the modification of the fuel venting system at the calendar compliance time that is required by the FOCA of Switzerland.

Cost Impact

The FAA estimates that 29 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 10 workhours per airplane to accomplish this action, and that the average labor rate is approximately $60 an hour. Parts cost approximately $614 per airplane. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $35,206, or $1,214 per airplane.

Compliance Time of This AD

Since the airplane's poor fuel tank venting causes engine fuel starvation during flights at maximum climb and decent, this unsafe condition is not a result of the number of times the airplane is operated. The chance of this situation occurring is the same for an airplane with 10 hours time-in-service (TIS) as it would be for an airplane with 500 hours TIS. For this reason, the FAA has determined that a compliance based on calendar time should be utilized in this AD in order to assure that the unsafe condition is addressed on all airplanes in a reasonable time period.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

98–12–01 Pilatus Aircraft Ltd: Amendment 39–10558; Docket No. 97–CE–09–AD.

Applicability: Models PC–6, PC–6–H1, PC–6–H2, PC–6/350, PC–6/350–H1, PC–6/350–H2, PC–6/A, PC–6/A–H1, PC–6/A–H2, PC–6/B–H2, PC–6/B1–H2, PC–6/B2–H2, PC–6/B2–H4, PC–6/C–H2, and PC–6/C1–H2 airplanes, serial numbers 001 through 915, certificated in any category, that are equipped with turbo-prop engines.

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

Compliance: Required within the next 3 calendar months after the effective date of this AD, unless already accomplished.

To prevent engine fuel starvation during maximum climb and descent caused by poor fuel tank venting with low fuel levels, which could result in a loss of engine power during critical phases of flight, accomplish the following:

(a) Modify the fuel venting system in accordance with the Accomplishment

Instructions section in Pilatus PC–6 Service Bulletin No. PC–6–SB–171, dated October 18, 1995.

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

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

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

(d) Questions or technical information related to Pilatus Service Bulletin No. PC–6–SB–171, dated October 18, 1995, should be directed to Pilatus Aircraft Ltd., Customer Liaison Manager, CH–6370 Stans, Switzerland; telephone: +41 41–6196 233; facsimile: +41 41–6103 351. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(e) The modification required by this AD shall be done in accordance with Pilatus Service Bulletin No. PC–6–SB–171, dated October 18, 1995. 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 Pilatus Aircraft Ltd., Customer Liaison Manager, CH–6370 Stans, Switzerland. Copies may be inspected at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in Swiss AD HB 95–451, dated November 1, 1995.

(f) This amendment becomes effective on July 13, 1998.

Issued in Kansas City, Missouri, on May 22, 1998.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–14607 Filed 6–3–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–CE–09–AD; Amendment 39–10561; AD 98–12–04]

RIN 2120–AA64

Airworthiness Directives; Glaser-Dirks Flugzeugbau GmbH Model DG–500M Gliders

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to all Glaser-Dirks Flugzeugbau GmbH (Glaser-Dirks) Model DG–500M gliders. This AD requires installing a rudder gap seal and modifying the cooling liquid reservoir mount. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. The actions specified by this AD are intended to prevent rudder vibrations caused by flow separation at the rudder gap, which could result in flutter with consequent loss of rudder control.

DATES: Effective July 21, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 21, 1998.

ADDRESSES: Service information that applies to this AD may be obtained from DG Flugzeugbau GmbH, Postfach 4120, D–76625 Bruchsal 4, Germany; telephone: +49 7257–89–0; facsimile: +49 7257–8922. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–09–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Kiesov, Aerospace Engineer, Small Airplane Directorate, Aircraft Certification Service, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone: (816) 426–6934; facsimile: (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to all Glaser-Dirks Model DG–500M gliders was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on March 20, 1998 (63 FR 13581). The NPRM proposed to require installing a rudder gap seal and modifying the cooling liquid reservoir mount. Accomplishment of the proposed installation as specified in the NPRM would be required in accordance with the maintenance manual. Accomplishment of the proposed modification to the cooling liquid reservoir mount as specified in the NPRM would be required in accordance with Glaser-Dirks Working Instruction No. 1 for TN 843/5, dated November 5, 1992, as referenced in Glaser-Dirks TN No. 843/5, dated November 30, 1992.

The NPRM was the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany.

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

The FAA's Determination

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

Compliance Time of This AD

Although the rudder vibrations identified in this AD occur during flight, this unsafe condition is not a result of the number of times the glider is operated. The chance of this situation occurring is the same for a glider with 10 hours time-in-service (TIS) as it is for a glider with 500 hours TIS. For this reason, the FAA has determined that a compliance based on calendar time should be utilized in this AD in order to assure that the unsafe condition is addressed on all gliders in a reasonable time period.

Cost Impact

The FAA estimates that 5 gliders in the U.S. registry will be affected by this AD, that it will take approximately 4 workhours per glider to accomplish this action, and that the average labor rate is approximately $60 an hour. Parts cost approximately $40 per glider. Based on these figures, the total cost impact of

this AD on U.S. operators is estimated to be $1,400, or $280 per glider.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

98–12–04 Glaser-Dirks Flugzeugbau GmbH: Amendment 39–10561; Docket No. 98–CE–09–AD.

Applicability: Model DG–500M gliders, all serial numbers, certificated in any category.

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

Compliance: Required within the next 3 calendar months after the effective date of this AD, unless already accomplished.

To prevent rudder vibrations caused by flow separation at the rudder gap, which could result in flutter with consequent loss of rudder control, accomplish the following:

(a) Install a rudder gap seal in accordance with the instructions in the maintenance manual, as referenced in Glaser-Dirks Technical Note (TN) No. 843/5, dated November 30, 1992.

(b) Modify the cooling liquid reservoir mount in accordance with Glaser-Dirks Working Instruction No. 1 for TN 843/5, dated November 5, 1992, as referenced in Glaser-Dirks TN No. 843/5, dated November 30, 1992.

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

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

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

(e) Questions or technical information related to Glaser-Dirks Technical Note No. 843/5, dated November 30, 1992, should be directed to DG Flugzeugbau GmbH, Postfach 4120, D–76625 Bruchsal 4, Germany; telephone: +49 7257–89–0; facsimile: +49 7257–8922. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(f) The modification required by this AD shall be done in accordance with Glaser-Dirks Working Instruction No. 1 for Technical Note 843/5, dated November 5, 1992, as referenced in Glaser-Dirks Technical Note No. 843/5, dated November 30, 1992. 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 DG Flugzeugbau GmbH, Postfach 4120, D–76625 Bruchsal 4, Germany. Copies may be inspected at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in German AD 93–010, dated January 5, 1993.

(g) This amendment becomes effective on July 21, 1998.

Issued in Kansas City, Missouri, on May 26, 1998.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–14618 Filed 6–3–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–102–AD; Amendment 39–10560; AD 98–12–03]

RIN 2120–AA64

Airworthiness Directives; Alexander Schleicher Segelflugzeugbau Models ASW–19 and ASK 21 Sailplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Alexander Schleicher Segelflugzeugbau (Alexander Schleicher) Models ASW–19 and ASK 21 sailplanes. This AD requires: modifying the rudder surface panels; replacing the airbrake bellcrank; and modifying the rear canopy hinge structure. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. The actions specified by this AD are intended to prevent loss of the canopy caused by design deficiency, airbrake failure caused by cracking, and rudder panel flutter caused by high density altitude conditions, all of which could result in reduced sailplane controllability.

DATES: Effective July 14, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 14, 1998.

ADDRESSES: Service information that applies to this AD may be obtained from Alexander Schleicher Segelflugzeugbau, 6416 Poppenhausen, Wasserkuppe, Federal Republic of Germany; telephone: 49.6658.890 or 49.6658.8920; facsimile: 49.6658.8923 or 49.6658.8940. This information may also be examined at the Federal

Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–102–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. J. Mike Kiesov, Project Officer, Sailplanes/Gliders, Small Airplane Directorate, Aircraft Certification Service, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone: (816) 426–6934; facsimile: (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Alexander Schleicher Model ASW–19 and ASK 21 sailplanes was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on March 17, 1998 (63 FR 13013). The NPRM proposed to require modifying the sailplanes' rudder panel by stiffening the rudder panel, reinforcing the rear canopy hinge, and replacing the airbrake bellcrank. Accomplishment of the proposed actions as specified in the NPRM would be in accordance with Alexander Schleicher ASW 19 Technical Note 2, dated September 6, 1976, and Alexander Schleicher ASK 21 Technical Note 20, dated October 16, 1987.

The NPRM was the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany.

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

The FAA's Determination

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

Compliance Time of This AD

The compliance time of this AD is presented in calendar time instead of hours time-in-service (TIS) because of the typical usage of the affected gliders. For example, an operator of an affected glider may only utilize the glider 50 hours TIS in a year, while another operator may utilize an affected glider 50 hours TIS in one month. The FAA has determined that a compliance based on calendar time should be utilized in this AD in order to assure that the unsafe condition is addressed on all gliders in a reasonable time period.

Cost Impact

The FAA estimates that 5 sailplanes in the U.S. registry will be affected by the rudder panel portion of this AD, that it will take approximately 10 workhours per sailplane to accomplish the rudder panel portion of this AD, and that the average labor rate is approximately $60 an hour. Parts cost approximately $50 per sailplane. Based on these figures, the total cost impact of the rudder panel portion of this AD on U.S. operators is estimated to be $3,250, or $650 per sailplane.

The FAA estimates that 30 sailplanes in the U.S. registry will be affected by the airbrake bellcrank portion of this AD, that it will take approximately 6 workhours per sailplane to accomplish the rudder panel portion of this AD, and that the average labor rate is approximately $60 an hour. Parts cost approximately $200 per sailplane. Based on these figures, the total cost impact of the airbrake bellcrank portion of this AD on U.S. operators is estimated to be $16,800, or $560 per sailplane.

The FAA estimates that 30 sailplanes in the U.S. registry will be affected by the rear canopy hinge portion of this AD, that it will take approximately 11 workhours per sailplane to accomplish the rear canopy hinge portion of this AD, and that the average labor rate is approximately $60 an hour. Parts cost approximately $15 per sailplane. Based on these figures, the total cost impact of the rear canopy hinge portion proposed AD on U.S. operators is estimated to be $20,250, or $675 per sailplane.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

98–12–03 Alexander Schleicher Segelflugzeugbau: Amendment 39–10560; Docket No. 97–CE–102–AD.

Applicability: Model ASW–19 sailplanes (serial numbers 19019 through 19037, 19040, and 19042 through 19044), and Model ASK 21 sailplanes (serial numbers 21001 through 21345), certificated in any category.

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

Compliance: Required as indicated in the body of this AD, unless already accomplished.

To prevent loss of the canopy caused by design deficiency, airbrake failure caused by cracking, and rudder panel flutter caused by high density altitude conditions, all of which

could result in reduced sailplane controllability, accomplish the following:

(a) Within the next 3 calendar months after the effective date of this AD, accomplish the following:

(1) For Alexander Schleicher Model ASW–19 sailplanes, modify the rudder panel in accordance with the Instructions section in Alexander Schleicher ASW 19 Technical Note No. 2, dated September 6, 1976.

(2) For Alexander Schleicher Model ASK 21 sailplanes, replace the airbrake bellcrank with an airbrake bellcrank of improved design in accordance with the Action section, paragraphs 3.1, 3.2, and 3.3 in Alexander Schleicher ASW 21 Technical Note No. 20, dated October 16, 1987.

(3) For Alexander Schleicher Model ASK 21 sailplanes, modify the rear canopy hinge in accordance with the Action section, paragraph 4.2, in Alexander Schleicher ASW 21 Technical Note No. 20, dated October 16, 1987.

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

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

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

(d) Questions or technical information related to the service information referenced in this AD, should be directed to Alexander Schleicher Segelflugzeugbau, 6416 Poppenhausen, Wasserkuppe, Federal Republic of Germany. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(e) The modifications and replacement required by this AD shall be done in accordance with Alexander Schleicher ASW 19 Technical Note 2, dated September 6, 1976, and Alexander Schleicher ASK 21 Technical Note 20, dated October 16, 1987. 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 Alexander Schleicher Segelflugzeugbau, 6416 Poppenhausen, Wasserkuppe, Federal Republic of Germany. Copies may be inspected at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in German AD No. 76–258, dated September 3, 1976, for the rudder panel condition; and German AD No. 88–2, dated January 1, 1988, for the airbrake bellcrank and the rear canopy hinge conditions.

(f) This amendment becomes effective on July 14, 1998.

Issued in Kansas City, Missouri, on May 22, 1998.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–14617 Filed 6–3–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–76–AD; Amendment 39–10559; AD 98–12–02]

RIN 2120–AA64

Airworthiness Directives; SOCATA Groupe Aerospatiale Model TBM 700 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain SOCATA Groupe Aerospatiale (SOCATA) Model TBM 700 airplanes. This AD requires inspecting the elevator trim tab fittings for cracks, and replacing any elevator trim tab found to have cracks. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for France. The actions specified by this AD are intended to prevent cracks in the elevator trim tab fittings, which could result in separation of the elevator trim tab and loss of control of the airplane.

DATES: Effective July 17, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 17, 1998.

ADDRESSES: Service information that applies to this AD may be obtained from SOCATA Groupe Aerospatiale, Customer Support, Aerodrome Tarbes-Ossun-Lourdes, BP 930–F65009 Tarbes Cedex, France; telephone: 33–5–62–41–76–52; facsimile: 33–5–62–41–76–54; or the Product Support Manager, SOCATA—Groupe AEROSPATIALE, North Perry Airport, 7501 Pembroke Road, Pembroke Pines, Florida 33023; telephone: (954) 893–1400; facsimile: (954) 893–1402. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–76–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 1201 Walnut Street, suite 900, Kansas City, Missouri 64106; telephone: (816) 426–6934; facsimile: (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain SOCATA Model TBM 700 airplanes was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on February 12, 1998 (63 FR 7080). The NPRM proposed to require inspecting the elevator trim tab fittings for cracks using a dye penetrant method, and replacing any cracked elevator trim tab. Accomplishment of the proposed inspection and replacement would be in accordance with SOCATA TBM Aircraft Service Bulletin No. SB 70–079–55, dated April, 1996.

The NPRM was the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for France.

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

Comment No. 1: Number of Airplanes Affected

SOCATA Group Aerospatiale (SOCATA), which is the manufacturer of the affected airplanes, states that the applicability of the proposed action is wrong. The proposed action will not affect all of the Model TBM 700 airplanes, and that the only airplanes affected are those airplanes with serial numbers 83, and 93 through 109. SOCATA also states that its most current records show that there are only seven affected TBM 700 airplanes on the U.S. Registry instead of the 16 affected airplanes that the FAA estimates, which would reduce the cost impact projected in the NPRM.

The FAA concurs. Since publication of the proposed action, this information has become available to the FAA by way of the manufacturer. The final rule will be changed to reflect the above serial

numbers in the applicability section. The final rule will also be changed with respect to the cost impact estimate, thereby reducing the total cost impact on the owners/operators in the U.S. fleet.

Comment No. 2: Change in Cost of Parts

The manufacturer states that the cost of the elevator trim tab has changed from $200 to $2,100 because the trim tab fitting is built into a larger assembly. Removing just the cracked fitting from the elevator trim tab is impossible. Therefore, if cracks are found, the entire elevator trim tab assembly must be replaced.

The FAA concurs. The final rule will reflect the change in the cost of the elevator trim tab assembly and the cost impact paragraph to reflect more accurate numbers. If no cracks are found in the elevator trim tab fitting, it is unlikely that cracks will occur at a later time.

Comment No. 3: Wrong Telephone and Facsimile Numbers

SOCATA advises that the telephone and facsimile numbers published in the NPRM are wrong and should be changed accordingly. The FAA concurs and will change the telephone and facsimile numbers in the final rule.

The FAA's Determination

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

Cost Impact

The FAA estimates that 7 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 1 workhour per airplane to accomplish the inspection, and that the average labor rate is approximately $60 an hour. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $420, or $60 per airplane, for the inspection only.

If cracks are found during the required inspection, parts cost approximately $2,100 per airplane. The FAA is unable to determine which of the affected airplanes inspected would have cracks; therefore, the cost of the parts would only be incurred by an owner/operator if cracks were found during the required inspection. The manufacturer has informed the FAA that one elevator trim tab assembly has been shipped to an owner/operator of one of the affected airplanes. The FAA is assuming that the assembly was installed. This would reduce the cost impact for the required inspection by $60, from $420 to $360.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

98–12–02 SOCATA Groupe Aerospatiale: Amendment 39–10559; Docket No. 97–CE–76–AD.

Applicability: Model TBM 700 airplanes, serial numbers 83, and 93 through 109, certificated in any category.

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

Compliance: Required within the next 100 hours time-in-service (TIS) after the effective date of this AD, unless already accomplished.

To prevent cracks in the elevator trim tab fitting, which could result in separation of the elevator trim tab and loss of control of the airplane, accomplish the following:

(a) Inspect the left- and right-hand elevator trim tab fittings for cracks using a dye penetrant aerosol method in accordance with the Accomplishment Instructions section in SOCATA TBM Aircraft Service Bulletin (SB) No. 70–079–55, dated April, 1996.

(b) If cracks are found, prior to further flight, replace the cracked part with one of improved design in accordance with the Accomplishment Instructions section in SOCATA TBM Aircraft SB No. 70–079–55, dated April, 1996.

(c) No person may install an elevator trim tab assembly manufactured between January 1, 1993 and February 29, 1996, on any SOCATA Model TBM 700 airplane.

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

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

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

(f) Questions or technical information related to SOCATA TBM Aircraft SB No. 70–079–55, dated April, 1996, should be

directed to SOCATA Groupe AEROSPATIALE, Customer Support, Aerodrome Tarbes-Ossun-Lourdes, BP 930—F65009 Tarbes Cedex, France; telephone (33) 62.41.73.00; facsimile 62.41.76.54; or the Product Support Manager, SOCATA—Groupe AEROSPATIALE, North Perry Airport, 7501 Pembroke Road, Pembroke Pines, Florida 33023; telephone (954) 964–6877; facsimile: (954) 964–1668. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(g) The inspection and replacement required by this AD shall be done in accordance with SOCATA TBM Aircraft SB No. 70–079–55, dated April, 1996. 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 SOCATA Groupe AEROSPATIALE, Customer Support, Aerodrome Tarbes-Ossun-Lourdes, BP 930—F65009 Tarbes Cedex, France; or the Product Support Manager, SOCATA—Groupe AEROSPATIALE, North Perry Airport, 7501 Pembroke Road, Pembroke Pines, Florida 33023. Copies may be inspected at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(h) This amendment becomes effective on July 17, 1998.

Issued in Kansas City, Missouri, on May 22, 1998.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–14615 Filed 6–3–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–129–AD; Amendment 39–10562; AD 98–12–06]

RIN 2120–AA64

Airworthiness Directives; Stemme GmbH & Co. KG Models S10 and S10–V Sailplanes.

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Stemme GmbH & Co. KG (Stemme) Models S10 and S10–V sailplanes. This AD requires replacing the fuel filter if it is contaminated, inserting a revision to the Limitations Section of the flight manual, and inspecting the engine valve shafts for brownish-black sticky residue. If a residue is found on the valve shafts, this action will require cleaning the engine. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. The actions specified by this AD are intended to prevent engine valve malfunction, which could cause engine failure during flight and loss of control of the sailplane.

DATES: Effective July 17, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 17, 1998.

ADDRESSES: Service information that applies to this AD may be obtained from Stemme GmbH & Co. KG, Gustav-Meyer-Allee 25, D–13355 Berlin, Federal Republic of Germany. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–129–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Kiesov, Aerospace Engineer, Small Airplane Directorate, Aircraft Certification Service, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone (816) 426–6934; facsimile (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Stemme Models S10 and S10–V sailplanes was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on March 16, 1998 (63 FR 12706). The NPRM proposed to require replacing the fuel filter if contaminated, inserting a revision to the Limitations Section of the flight manual (FM), and inspecting the engine valve shafts for brownish-black sticky residue. If a residue is found on the valve shafts, the proposed action would require cleaning the engine. Accomplishment of the proposed insertion, inspection, and cleaning as specified in the NPRM would be in accordance with Stemme Service Bulletin No. A31–10–021, dated June 28, 1995, and Limbach Flugmotoren Technical Bulletin No. 47, dated June 28, 1995.

The NPRM was the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany.

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

The FAA's Determination

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

Cost Impact

The FAA estimates that 9 sailplanes in the U.S. registry will be affected by this AD, that it will take approximately 5 workhours per sailplane to accomplish this action, and that the average labor rate is approximately $60 an hour. Parts cost approximately $30 per sailplane. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $2,970, or $330 per sailplane.

Compliance Time of This AD

The compliance time of this AD is presented in calendar compliance time instead of hours time-in-service (TIS) because the average monthly usage of the affected sailplanes varies throughout the fleet. For example, one owner may operate the sailplane 25 hours TIS in one week, while another operator may operate the sailplane 25 hours TIS in one year. In order to assure that all of the affected sailplanes are in compliance within a reasonable amount of time, the FAA has determined a compliance time of 30 days after the effective date of this AD to insert the FM Limitations Section revision, and 60 days after the effective date of this AD to replace the fuel filter and inspect the engine is appropriate.

Regulatory Impact

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

not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

98–12–06 Stemme GmbH & Co. KG: Amendment 39–10562; Docket No. 97–CE–129–AD.

Applicability: Model S10 (serial numbers 10–12 through 10–60), and Model S10–V (serial numbers 14–002 through 14–022) and transformed Model S10–V (serial numbers 14–012M to 14–060M) sailplanes, certificated in any category.

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

Compliance: Required as indicated in the body of this AD, unless already accomplished.

To prevent engine valve malfunction, which could cause engine failure during flight and loss of control of the sailplane, accomplish the following:

(a) Within the next 30 days after the effective date of this AD, insert a revision in the Limitations Section 2.4.2.1, Fuel, of the flight manual (FM) that states: ''Only authorized fuel is AVGAS 100LL'' in accordance with the Instructions section of Stemme Service Bulletin (SB) Document No. A31–10–021, dated June 28, 1995.

(b) Incorporating the revision to the Limitations Section of the FM, as required by paragraph (a) of this AD, may be performed by the owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7), and must be entered into the aircraft records showing compliance with this AD in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).

(c) Within the next 60 days after the effective date of this AD, accomplish paragraphs (c)(1), (c)(2), and (c)(3) of this AD;

(1) Inspect the fine fuel filter for the accumulation of chopped cotton fibers, and replace the filter if it is contaminated, prior to further flight, in accordance with the Instructions section of Stemme SB Document No. A31–10–021, dated June 28, 1995; and,

(2) Inspect the engine in accordance with LIMBACH Flugmotoren Technical Bulletin No. 47, dated June 28, 1995.

(3) If a brownish-black sticky residue is found on the engine, prior to further flight, disassemble and clean the engine in accordance with LIMBACH Flugmotoren Technical Bulletin No. 47, dated June 28, 1995.

(d) Special flight permits may be issued in accordance with §§ 1.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the sailplane to a location where the requirements of this AD can be accomplished.

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

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

(f) Questions or technical information related to Stemme Service Bulletin No. A31–10–021, dated June 28, 1995, and LIMBACH Flugmotoren Technical Bulletin No. 47, dated June 28, 1995, should be directed to Stemme GmbH & Co. KG, Gustav-Meyer-Allee 25, D–13355 Berlin, Federal Republic of Germany. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(g) The insertion, inspections, and replacement required by this AD shall be done in accordance with Stemme Service Bulletin No. A31–10–021, dated June 28, 1995, and Limbach Flugmotoren Technical Bulletin No. 47, dated June 28, 1995. 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 Stemme GmbH & Co. KG, Gustav-Meyer-Allee 25, D–13355 Berlin, Federal Republic of Germany. Copies may be inspected at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in German AD 95–273, dated July 11, 1995.

(h) This amendment becomes effective on July 17, 998.

Issued in Kansas City, Missouri, on May 27, 1998.

Marvin R. Nuss,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–14614 Filed 6–3–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–SW–22–AD; Amendment 39–10564; AD 98–12–08]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France (Formerly Aerospatiale, Society Nationale Industrielle, Sud Aviation) Model SA–365N, SA–365N1, SA–365N2, and SA–366G1 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Eurocopter France (Formerly Aerospatiale, Society Nationale Industrielle, Sud Aviation) Model SA–365N, SA–365N1, SA–365N2, and SA–366G1 helicopters, that requires an inspection of the transmission deck for cracks; repair of any cracked transmission deck; and replacement of the transmission deck support beams (support beams) with redesigned support beams. This amendment is prompted by several reports of cracks in the transmission deck and support beams. The actions specified by this AD are intended to detect cracks that reduce the strength of the main gearbox strut attachment and could result in failure of the main

gearbox mounting, and subsequent loss of control of the helicopter.

DATES: Effective July 9, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 9, 1998.

ADDRESSES: The service information referenced in this AD may be obtained from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641–3460, fax (972) 641–3527. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 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.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Mathias, Aerospace Engineer, FAA, Rotorcraft Directorate, ASW–111, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5123, fax (817) 222–5961.

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 Eurocopter France SA–365N, SA–365N1, SA–365N2, and SA–366G1 helicopters was published in the **Federal Register** on December 3, 1997 (62 FR 63912). That action proposed to require an inspection of the transmission deck for cracks; repair of any cracked transmission deck; and replacement of the support beams with redesigned support beams.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 137 helicopters of U.S. registry will be affected by this AD, that it will take approximately 50 work hours per helicopter to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $5,000 per helicopter. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $1,096,000.

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 a new airworthiness directive to read as follows:

AD 98–12–08 Eurocopter France (Formerly Aerospatiale, Society Nationale Industrielle, Sud Aviation): Amendment 39–10564. Docket No. 96–SW–22–AD.

Applicability: Model SA–365N, SA–365N1, SA–365N2, and SA–366G1 helicopters, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (c) 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 as indicated, unless accomplished previously.

To detect cracks that reduce the strength of the main gearbox strut attachment and could result in failure of the main gearbox mounting, and subsequent loss of control of the helicopter, accomplish the following:

(a) For Model SA–365N, SA–365N1, and SA–366G1 helicopters, on or before attaining 4,000 hours time-in-service (TIS), or within 50 hours TIS after the effective date of this AD, whichever occurs later; and for Model SA–365N2 helicopters, on or before attaining 2,000 hour TIS, or within 50 hours TIS after the effective date of this AD, whichever occurs later; perform the following:

(1) Inspect the transmission deck for cracks using a dye-penetrant inspection method, in accordance with paragraph BB of Eurocopter France Telex Service No. 10011, dated February 24, 1995. If a crack is found in the transmission deck, repair prior to further flight.

Note 2: A FAA-approved repair solution can be initiated by contacting the American Eurocopter Technical Support Department, ATTN: Manager, telephone (972) 641–3460, fax (972) 641–3527.

(2) Replace the currently installed transmission deck support beams, part numbers (P/N) 365A21–3365–49 and 365A21–3365–CY, with reinforced transmission deck support beams, P/N 365A21–3365–JE–01 and 365A21–3365–JF–01, in accordance with the Accomplishment Instructions in Eurocopter France Service Bulletin No. 05.00.36, Rev. 1, dated December 16, 1996.

(b) After completion of paragraphs (a)(1) and (a)(2) of this AD, clean, prime and paint the affected areas of the transmission deck and the reinforced support beams in accordance with paragraph BB 2A of Eurocopter France Telex Service No. 10011, dated February 24, 1995.

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

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Rotorcraft Standards Staff.

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

(e) The inspection and repair or modification, if necessary, shall be done in accordance with the Accomplishment Instructions in Eurocopter France Service Bulletin No. 05.00.36, Rev. 1, dated December 16, 1996, and paragraphs BB and BB 2A of Eurocopter France Telex Service No. 10011, dated February 24, 1995. 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 American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641–3460, fax (972) 641–3527. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 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.

(f) This amendment becomes effective on July 9, 1998.

Note 4: The subject of this AD is addressed in Direction Generale De L'Aviation Civile (France) AD 95–068–017(B) and AD 95–067–038(B), both dated April 12, 1995.

Issued in Fort Worth, Texas, on May 28, 1998.

Henry A. Armstrong,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 98–14929 Filed 6–3–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–AGL–61]

Modification of Class D Airspace; Minot AFB, ND; and Class E Airspace; Minot, ND; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects one error in the legal description of a final rule that was published in the **Federal Register** on March 23, 1998 (63 FR 13778), Airspace Docket No. 97–AGL–61. The final rule modified Class D Airspace at Minot AFB, ND, and modified Class E Airspace at Minot, ND.

EFFECTIVE DATE: 9091 UTC, June 18, 1998.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, IL 60018, telephone: (847) 294–7477.

SUPPLEMENTARY INFORMATION:

History

Federal Register Document 98–7405, Airspace Docket No. 97–AGL–61, published on March 23, 1998 (63 FR 13778) rule modified Class D Airspace at Minot AFB, ND, and modified Class E Airspace at Minot, ND. One error was discovered in the legal description for the Class E airspace for Minot, ND. This action corrects that error.

Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, the legal description for the Class E airspace Minot, ND, as published in the **Federal Register** March 23, 1998 (63 FR 13778), (FR Doc. 98–7405), is corrected as follows:

PART 71—[CORRECTED]

§ 71.7 [Corrected]

AGL ND E5 Minot, ND [Corrected]

On page 13779, in the Class E airspace designation for Minot, ND, incorporated by reference in § 71.1, in column 2, line 11 from top of column, the phrase ''Deering TACAN 292 deg. radial'' to read ''Deering TACAN 312 degree radial''.

Issued in Des Plaines, IL on May 20, 1998.

Maureen Woods,

Manager, Air Traffic Division, Great Lakes Region.

[FR Doc. 98–14753 Filed 6–3–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–ASO–28]

RIN 2120–AA66

Realignment of Jet Route J–66; Tennessee

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action realigns Jet Route 66 (J–66) in the State of Tennessee. Realigning J–66 is necessary because the route is aligned on a radial of the Memphis Very High Frequency Omnidirectional Range/Tactical Air Navigation (VORTAC) and that VORTAC will be moved south of its present position. This action will ensure that air traffic operations along the jet route are not interrupted by the relocation of the navigational aid. This action coincides with the relocation of the Memphis VORTAC.

DATES: Effective 0901 UTC, August 13, 1998.

Comments for inclusion in the Rules Docket must be received on or before July 20, 1998.

ADDRESSES: Send comments on the rule in triplicate to: Manager, Air Traffic Division, ASO–500, Docket No. 97–ASO–28, Federal Aviation Administration, P.O. Box 20636, Atlanta, GA 30320. Comments may be also sent electronically to the following Internet address: 9-Direct Rule-Comments@faa.dot.gov. Comments delivered must be marked Airspace Docket No. 97–ASO–28.

The official docket may be examined in the Rules Docket, Office of the Chief Counsel, Room 916G, 800 Independence Avenue, SW., Washington, DC, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m.

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

SUPPLEMENTARY INFORMATION:

The Rule

The FAA is amending 14 CFR part 71 to modify J–66 in the State of Tennessee. Realigning J–66 will ensure that air traffic operations are not interrupted by virtue of relocating the Memphis VORTAC. The effective date of this direct final rule coincides with the effective date of relocation of the Memphis VORTAC.

Incorporation by Reference

Jet route designations are published in paragraph 2004 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The jet route designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and therefore is issuing it as a direct final rule. Effective August 13, 1998, the FAA will relocate the Memphis, TN, VORTAC. Currently, J–66 is aligned on a radial of the Memphis VORTAC. The Memphis VORTAC is scheduled to be relocated 2.85 miles south of its present position; therefore, realigning J–66 is necessary to ensure that air traffic operations are not interrupted. The jet route will be realigned with the Memphis VORTAC at the new location. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the direct final rule will become effective. If the FAA does receive, within the comment

period, an adverse or negative comment, or written notice of intent to submit an adverse or negative comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Agency Findings

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 not controversial and unlikely to result in adverse or negative comments and only involves an established body of technical regulations that require frequent and routine amendments to keep them operationally current. Therefore, this regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) as the anticipated impact of this proposal is minimal, preparation of a Regulatory Evaluation is not necessary.

Since this is a routine matter that will only affect air traffic procedures and air navigation, the FAA certifies 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.

Comments Invited

Although this action is in the form of a direct final rule and was not preceded by a notice of proposed rulemaking, 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 specified closing date for comments will be considered, and this rule may be amended or withdrawn in light of comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action may be needed.

Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related 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 action 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 Airspace Docket No. 97–ASO–28.'' The postcard will be date stamped and returned to the commenter.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. Amend paragraph 2004 of the Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1, as follows:

Paragraph 2004—Jet Routes

* * * * *

J–66 [Revised]

From Newman, TX; via Big Spring, TX; Abilene, TX; Ranger, TX; Bonham, TX; Little Rock, AR; Memphis, TN; INT Memphis 100° and Rome, GA 284° radials; to Rome.

* * * * *

Issued in Washington, DC, on May 28, 1998.

John S. Walker,

Program Director for Air Traffic Airspace Management.

[FR Doc. 98–14881 Filed 6–3–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 902

50 CFR Part 679

[Docket No. 970703166–8129–03; I.D. 060997A]

RIN 0648–AH65

Fisheries of the Exclusive Economic Zone off Alaska; Community Development Quota Program

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

ACTION: Final rule.

SUMMARY: NMFS issues a final rule that would implement part of Amendment 39 to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (BSAI) and part of Amendment 5 to the Fishery Management Plan for the Commercial King and Tanner Crab Fisheries in the Bering Sea/Aleutian Islands (BS/AI). These regulations implement administrative revisions and the catch monitoring and accounting requirements for the Multispecies Community Development Quota (MS CDQ) Program.

DATES: Effective July 6, 1998 except for §§ 679.5(n), 679.30(a)(5)(i)(A)(*2*), and 679.32(c)(4)(i) which are not effective until the Office of Management and Budget approves the information collection requirement contained in those sections. NMFS will publish a document in the **Federal Register** announcing the effective date for those sections. Community Development Plans (CDPs) for the MS CDQ Program for the 1998 through 2000 CDP cycle must be submitted to NMFS by July 7, 1998. Fishing under the approved multispecies groundfish CDPs is authorized to begin on October 1, 1998.

ADDRESSES: Copies of the Environmental Assessment/Regulatory Impact Review (EA/RIR) for this action may be obtained from the North Pacific Fishery Management Council, Suite 306, 605 West 4th Avenue, Anchorage, AK 99501–2252; telephone: 907–271–2809.

FOR FURTHER INFORMATION CONTACT: Sally Bibb, 907–586–7228.

SUPPLEMENTARY INFORMATION: The U.S. groundfish fisheries of the Gulf of Alaska (GOA) and the BSAI in the EEZ are managed by NMFS pursuant to the fishery management plans (FMPs) for groundfish in the respective

management areas. The commercial king crab and Tanner crab fisheries in the BS/AI are managed by the State of Alaska with Federal oversight, pursuant to the FMP for those fisheries. The FMPs were prepared by the Council, pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801 *et seq.*, and are implemented by regulations for U.S. fisheries at 50 CFR part 679. General regulations at 50 CFR part 600 also apply.

On August 15, 1997, NMFS published a proposed rule to implement the MS CDQ Program and the Groundfish and Crab License Limitation Program (LLP) (62 FR 43866). This proposed rule contained a description of, and rationale for, the MS CDQ Program. Public comment on the proposed rule was invited through September 29, 1997. Thirty-six letters of comment about the MS CDQ portion of the proposed rule were received and are addressed in the following Response to Comments section. Additionally, the Response to Comments section addresses comments about the MS CDQ Program requirements that were received in response to the proposed rule for the at-sea scales program published on June 16, 1997 (62 FR 32564). The final rule implementing the performance and technical requirements for at-sea scales was published on February 4, 1998 (63 FR 5836).

Because of the size and complexity of the final rule to implement the MS CDQ and LLP Programs, the need to respond to the large number of public comments received, and the need to respond to time critical events in the fishery, the LLP and MS CDQ programs are being implemented by means of three separate final rule documents. The first of these final rules was published on February 19, 1998 (63 FR 8356) and implemented the multispecies groundfish and crab CDQ reserves and closure of the Southeast Outside District of the GOA to fishing with trawl gear. The CDQ reserves had to be implemented early in 1998 in order to allocate groundfish, prohibited species, and crab to the MS CDQ Program for CDQ fishing in 1998.

This final rule is the second of the three final rules implementing the MS CDQ and LLP Programs. It implements revisions to the administrative regulations and new catch monitoring regulations for the MS CDQ fisheries.

Response to Comments

Comments on Program Implementation

Comment 1: Does NMFS have adequate funding and manpower to implement the many obligations that it imposes upon itself with the proposed MS CDQ Program?

Response: NMFS' Alaska Region has obtained approval for the funding and additional staff necessary to implement the MS CDQ Program.

Comment 2: The proposed regulations for combining vessels and processors participating in the groundfish and halibut CDQ fisheries under one set of regulations are burdensome for participants in the halibut CDQ fishery, do not consider the differences between the groundfish fisheries and the halibut fisheries, and generate information not worth the additional effort and cost to the CDQ participants or NMFS. Specifically, requirements for CDQ observers in shoreside processors taking deliveries of halibut CDQ, retention and delivery of all groundfish CDQ species by small vessels, CDQ check-in/check-out reports for all vessels, and weekly summaries of the catch by all vessels are not necessary for the halibut CDQ fisheries.

Response: NMFS agrees that differences exist between the small vessel halibut CDQ fisheries and the other groundfish CDQ fisheries, including fixed gear sablefish. In 1997, 1,884,000 lb (854 mt) of halibut CDQ was allocated to six CDQ groups. At least 75 percent of the 1997 catch was landed by small boats and skiffs under 32 ft (9.73 m) length overall (LOA) at about 10 small shoreside processors or at buying stations in Western Alaska villages. These processors do not submit other landing reports to NMFS and are not required to have observer coverage. In contrast, NMFS expects that most of the groundfish CDQ will be harvested by catcher/processors or large catcher vessels delivering to large groundfish shoreside processing plants.

In the proposed rule, NMFS proposed to consolidate all of the CDQ fisheries that would be managed by NMFS under one set of monitoring and catch accounting regulations to implement the Council's and NMFS' intent that all catch in the groundfish and halibut CDQ fisheries be accounted for by a CDQ allocation. Although NMFS proposed different observer coverage, equipment, and reporting requirements for different size and gear type vessels, no distinction was made between the requirements for vessels of the same size fishing in the halibut CDQ fisheries or fishing in the groundfish CDQ fisheries.

However, based on public comment, NMFS has determined that the differences between the small-scale halibut CDQ fisheries and the larger-scale groundfish CDQ fisheries warrant consideration of different catch monitoring and CDQ accounting regulations. Therefore, in this final rule, NMFS revises part 679 as follows:

1. Three new definitions are added in § 679.2 to distinguish between the three separate CDQ fisheries that will be managed in 1998. These definitions will be effective only for 1998 and will be removed or revised in future rulemaking.

a. *Fixed gear sablefish and halibut CDQ fishing* means fishing with fixed gear by an eligible vessel listed on an approved Community Development Plan (CDP) that results in the catch of any halibut CDQ or in the catch of any sablefish CDQ that accrues against the fixed gear sablefish CDQ reserve.

b. *Pollock CDQ fishing* means fishing with pelagic trawl gear by an eligible vessel listed on an approved CDP that results in the catch of pollock that accrues against the CDQ group's allocation of pollock CDQ.

c. *Groundfish CDQ fishing* means fishing by an eligible vessel listed on an approved CDP that results in the catch of any CDQ or prohibited species quota (PSQ) species other than pollock CDQ, halibut CDQ, and fixed gear sablefish CDQ.

2. In § 679.32(a), the reference to the halibut CDQ fisheries in the first sentence of the applicability paragraph is removed. The sentence now reads ''for all CDQ and PSQ caught while groundfish CDQ fishing as defined at § 679.2'' instead of ''in the groundfish or halibut CDQ fisheries * * *.''

No significant changes are made with the final rule to state how the small vessel halibut CDQ fishery will be managed in 1999 and thereafter because NMFS plans to solicit Council and public input before developing such measures. NMFS will publish rulemaking prior to December 31, 1998, to remove the sections with sunset dates at §§ 679.2, 679.32(a)(2) and (3), and 679.32(e) and (f). This future rulemaking will combine the catch accounting regulations for pollock CDQ fishing and fixed gear sablefish CDQ fishing with the multispecies groundfish CDQ fisheries managed under § 679.32 (a) through (d). At that time, NMFS will consider whether the small vessel halibut CDQ fisheries that deliver halibut CDQ to Western Alaska villages should be managed under different regulations than those under the groundfish CDQ fisheries. Council and public comment will be requested on any proposed changes to the current regulations.

Comments on CDQ Administration

Comment 3: The preamble to the proposed rule states that a CDQ group has a fiduciary responsibility to manage

CDQ assets in the best interests of the CDQ communities. This statement conflicts with corporate law because, under corporate law, board members have a fiduciary responsibility to the corporation, not to the individual shareholders. The obligation of the CDQ groups to operate on behalf of the member communities is already enunciated throughout the CDP and the allocation process.

Response: As do directors of other corporate entities, the board of directors of a CDQ group has primary fiduciary responsibility to the CDQ group corporation. However, the CDQ group corporation exists solely to serve the interests of the member communities as a whole. When a CDQ group does not serve the interests of the member communities as a whole, the CDQ group should be dissolved, and a new CDQ group should take its place. The interests of the member communities should be expressed in the CDP. If a CDQ group meets the milestones and goals of an approved CDP, the interests of the member communities will likely be realized. If a CDQ group does not follow its CDP and does not meet its milestones and goals, the CDQ group is likely not operating in the best interests of the member communities. No change to the regulations is required because this topic was discussed only in the preamble to the proposed rule.

Comment 4: The preamble to the proposed rule states that the communities have the opportunity to review the activities of the board members and the CDQ group, which implies access to confidential data. An ''open book'' policy would have a chilling effect on the CDQ group's ability to operate successful businesses.

Response: Any member of the public may request information about a CDQ group from NMFS. If NMFS determines that the requested information is not confidential and would not result in substantial competitive harm, NMFS will release that information to the public.

Comment 5: Members of the board of directors of a CDQ group should not be required to be elected by community members as proposed at § 679.30(a)(2)(iv). Board members are volunteers. Community elections of board members would require expenditure for advertisement and other election expenses and would discourage the most qualified from serving. NMFS should not remove the existing regulation that requires the board of directors to include one member from each community. Finally, the definition of ''qualified applicant'' should be revised to explain that board members may be elected by a community-wide election, by the local fishermen's organization's membership, or by the CDQ community's governing body.

Response: NMFS concurs. The requirement in the proposed rule in § 679.30(a)(2)(iv) that ''[i]f a qualified applicant represents more than one community, the board of directors of the qualified applicant must include at least one member elected in an at-large election by his or her community, for each community in the CDQ group.'' is changed to read, ''[i]f a qualified applicant represents more than one community, the board of directors of the qualified applicant must include at least one member from each of the communities represented.'' NMFS notes that CDQ board members are not volunteers and are usually paid an honorarium for their participation.

Comment 6: The information about the board of directors in section § 679.30(a)(2)(iv) under the Managing Organization Information should be placed in the definition for ''qualified applicant'' in the definitions section at § 679.2. Such a change would be an improvement because the board of directors constitutes a part of the qualified applicant and not a part of the managing organization.

Response: The information about the board of directors must remain in § 679.30(a) because all information required to be in a proposed CDP must be in this section. NMFS recognizes that paragraph (a)(2)(iv) is located in a section that describes managing organization information. However, no other location exists in § 679.30(a) for the board of directors information that is more acceptable than the current location.

Comment 7: NMFS should substitute the word ''approved'' for ''effective'' in the definition of a CDQ group because the word ''effective'' is not clear.

Response: NMFS concurs that the word ''effective'' is unclear and changes the definition of a ''CDQ group'' in § 679.2 from ''a qualified applicant with an effective CDP'' to ''a qualified applicant with an approved CDP.''

Comment 8: NMFS should make the information requirements for a proposed CDP consistent with the State of Alaska's requirements.

Response: NMFS, as the Federal agency responsible for implementing the CDQ program, requires that the information requested in § 670.30(a) be included in the proposed CDPs. The State of Alaska, as the initial recipient of the proposed CDPs, may request the CDQ groups to provide additional information in the proposed CDPs, or may request the CDQ groups to provide the proposed CDP information in a particular format, as long as the State requirements do not conflict with the Federal requirements.

Comment 9: The proposed CDQ regulations require a transition plan that includes a schedule for transition from reliance on quota allocations to self sufficiency in fisheries for each CDQ project. A transition plan for each CDQ project would be cumbersome and not very meaningful. A better transition plan would be one that estimates the impact on all CDQ group activities and the long-term revenue stream in the event that CDQ allocations cease.

Response: NMFS concurs. The regulations are changed at § 679.30(a)(6)(i) to define a transition plan as an overall schedule for transition from reliance on CDQ allocations to self-sufficiency in fisheries, based on the CDQ group's long-term revenue stream without CDQs.

Comment 10: NMFS should eliminate the requirement to revise the general CDP budget to reflect the annual budget reconciliation report (§ 679.30(g)(3)). The obligation to prepare a final general CDP budget, particularly since it will be months after the year end, is unnecessary for the full disclosure of annual financial operations.

Response: NMFS concurs. The CDQ regulations are changed at § 679.30(g)(3) to remove the requirement that the general CDP budget be revised to reflect the annual budget reconciliation.

Comment 11: Section 679.30(g)(4)(iv)(B) is not clear about whether halibut catcher vessels are considered ''CDQ partners.'' If NMFS considers that halibut catcher vessels are CDQ partners, then a full substantial amendment will be required to add or remove a vessel from a CDP. NMFS should make the CDQ regulations clear that a halibut catcher boat can be added to a CDP with a technical amendment.

Rseponse: NMFS does not have a definition of ''CDQ partner'' in the CDQ regulations. Vessels may be added or removed from a CDP with a technical amendment, except that a substantial amendment must be used to add a vessel to a CDP if the CDQ group is proposing an alternative catch estimation method under § 679.30(a)(5)(iii) (see further discussion under Changes from the Proposed Rule, item #8). However, if a CDQ group wants to add a vessel from a company that does not have a business relationship with the CDQ group (a new harvesting partner), the CDQ group may want to draft and sign a contract with the new harvesting partner to make clear the responsibilities of each party

during CDQ operations. Signing a new contract with a new harvesting partner requires a substantial amendment in most cases. Also, some vessels under the MS CDQ Program have equipment and operational requirements that must be met before they can be added to the list of eligible CDQ vessels. The CDQ group must ensure that any vessel that it adds to its list of eligible CDP vessels with a technical amendment has met the equipment and operational requirements of the CDQ regulations.

Comment 12: NMFS should require the State of Alaska to establish a separate panel or committee to review CDPs and make objective decisions regarding CDQ and PSQ allocations. An independent panel would be better suited to make good allocation decisions without being influenced by political pressures.

Response: The State is authorized to make recommendations to NMFS regarding the approval of proposed CDPs and CDQ/PSQ allocations. NMFS requires that the State hold public hearings on the CDQ applications and consult with the Council about its recommendations. The public has the opportunity to comment on the State's process and recommendations in an open forum at both of these meetings. NMFS reviews the State's written recommendations and the administrative record from the public hearings before making a final decision to approve or disapprove the State's recommended CDQ allocations. Therefore, at this time NMFS does not believe there is a need for further requirements about how the State makes CDQ allocation decisions.

Comment 13: NMFS should change the date for the transmittal of proposed CDPs from the State to NMFS from October 7 to October 15 to give the State additional time if it is necessary to revise CDPs after the September Council meeting.

Response: NMFS concurs and revises § 679.30(d) to change the transmittal date for proposed CDPs from October 7 to October 15.

Comment 14: The proposed regulations would remove § 679.30(f) of current CDQ regulations that provides for the suspension or termination of a CDP. NMFS should re-insert this language. It is a necessary management tool.

Response: The final rule includes a portion of the language from § 679.30(f) of the current CDQ regulations in the final rule as § 679.30(h). Also, NMFS is planning to promulgate additional regulations clarifying the process for suspending or terminating a CDP. Other portions of the current regulations are not included in the final rule because civil procedure regulations at 15 CFR part 904 already provide a system for prosecuting violations of MS CDQ regulations.

Comments on CDQ Allocations and Transfers

Comment 15: NMFS should clarify what activity is prohibited in the proposed rule at § 679.7(d)(15), which stated ''for a catcher vessel, catch, retain on board or deliver CDQ groundfish or halibut together with non-CDQ groundfish or halibut, except that IFQ sablefish and halibut may be caught, retained, or delivered together with CDQ groundfish and halibut by vessels using fixed gear.''

Response: Section 679.7(d)(15) in the proposed rule is now § 679.7(d)(13) in the final rule. This section applies only to catcher vessels participating in the groundfish CDQ fisheries. Operators of these catcher vessels are prohibited from catching, retaining on board, or delivering groundfish CDQ or halibut CDQ together with non-CDQ groundfish, with one exception: Catcher vessels using fixed gear are allowed to catch, retain on board, and deliver Individual Fishing Quota Program (IFQ) sablefish and IFQ halibut together with groundfish CDQ and halibut CDQ. This prohibition is necessary for catcher vessels to account for all catch during a CDQ fishing trip with CDQ, PSQ, or IFQ. Failure to prohibit this activity would allow catcher vessels fishing in the CDQ fisheries to attribute some of their catch against the moratorium groundfish fishery allocations of total allowable catch (TAC) amounts, which would be contrary to the Council's and NMFS' intent.

This prohibition can be stated more clearly by using the definition of moratorium groundfish species in existing regulations. Therefore, the prohibition is revised to read: ''for the operator of a catcher vessel, catch, retain on board, or deliver groundfish CDQ species together with moratorium groundfish species.'' NMFS is also adding to this final rule a prohibition against catcher/processors catching groundfish CDQ species together with moratorium groundfish species in the same haul, set, or pot.

Comment 16: In § 679.7(d)(16) of the proposed rule, NMFS proposed to prohibit catcher/processors and observed catcher vessels from (1) combining catch from more than one CDQ group in the same haul or set and (2) combining CDQ and IFQ in the same haul or set. NMFS received comments opposed to this proposal by CDQ groups that have purchased halibut IFQ to fish together with their CDQ allocations. The halibut IFQ would be used by CDQ groups to retain halibut in their fixed gear groundfish CDQ fisheries.

NMFS also received comments opposed to the prohibition against combining catch from more than one CDQ group in a haul, set, or delivery from CDQ groups. Commenters state that this restriction would limit the CDQ groups' ability to fully harvest their CDQ allocations and would create difficulties in managing small CDQs. Furthermore, NMFS currently allows this practice in the existing CDQ programs.

Response: Section 679.7(d)(16) of the proposed rule is now § 679.7(d)(15) in the final rule. NMFS has not changed this section in the final rule in response to these comments for the following reasons:

Allowing catch from the same haul or set to be split among two or more CDQ groups would allow de facto transfers to occur outside the established procedure for State and NMFS review and approval of transfers. For example, the final rule requires that PSQ may be transferred only in combination with CDQ and only during the month of January. However, if splitting hauls or sets were allowed, one CDQ group could claim the CDQ species in a haul or set and another CDQ group could claim the PSQ species. Although this would not be an actual transfer of PSQ from one group to another, it would allow a CDQ group to catch CDQ even if it had no PSQ remaining to support its groundfish CDQ fisheries. NMFS believes that the question of allowing split hauls or sets should be more thoroughly analyzed and considered by the Council before making a change in the regulations.

NMFS also has declined to change the final rule to allow vessel operators to catch CDQ and IFQ species in the same set because of the significant increase in the complexity of the catch monitoring and recordkeeping and reporting requirements that would result. The catch of IFQ species is monitored on the basis of the vessel operator's report of retained catch weight made to NMFS Enforcement. Estimates based on observer data are not used for IFQ accounting. However, the catch of CDQ species will be determined based on the CDQ observer's estimate of total catch weight and species composition for each set. The vessel operator's reports of retained catch weight will not be used for CDQ catch accounting. This difference in the catch accounting occurs because only retained catch accrues against an IFQ account, while all catch (retained and discarded) accrues against a CDQ account. An

unacceptable level of complexity is added if the two different catch accounting methods have to be applied to catch in the same set of gear. Therefore, while vessel owners may catch IFQ and CDQ together in the same fishing trip, they will be prohibited from catching IFQ and CDQ in the same set of gear.

Comment 17: NMFS should continue to require that herring prohibited species bycatch be discarded from the vessel and should not require that the herring be retained until it is weighed on a scale. The herring PSQ is not a strict quota that will require trawl vessels fishing for a CDQ group to stop fishing altogether once it is attained. Rather, once the herring PSQ is reached, all trawl vessels fishing for the CDQ group would be required to stop fishing in the Herring Savings Areas (HSA) during certain times of the year. Therefore, the quota monitoring needs of the CDQ program are not great enough to warrant a change in retention requirements for herring PSQ. Implementation of this requirement would also require the State of Alaska to change regulations prohibiting the retention of herring.

Response: NMFS recommended retention of herring PSQ because observers on catcher vessels using trawl gear do not have the ability to estimate the weight of herring bycatch discarded at sea accurately enough for NMFS to enforce closures of the HSA once the herring PSQ is reached by a CDQ group. In addition, all herring bycatch by vessels using trawl gear is assumed to be dead after it is brought on board the vessel. However, NMFS recognizes that a change in State regulations is needed before NMFS could require retention and delivery of herring to an onshore plant and that this change is unlikely to occur prior to implementation of the MS CDQ Program. Therefore, NMFS has determined that the only option is not to allocate 7.5 percent of the herring prohibited species catch (PSC) limit to the MS CDQ fisheries, to accrue all herring bycatch by vessels using trawl gear in the MS CDQ fisheries to the overall herring PSC limit, and to require vessels fishing in MS CDQ fisheries to comply with closure of the HSAs once the herring PSC limit is reached. This final rule amends § 679.21(1)(i) to remove the herring PSQ reserve so that a 7.5-percent allocation of the herring PSC limit is not made to the CDQ fisheries. Additionally, the requirement for catcher vessels to retain herring PSQ is removed from § 679.32(c) and the prohibition against fishing in the HSAs once the herring PSQ is attained is removed. Finally, recordkeeping and reporting requirements and catch accounting requirements in §§ 679.5(n) and 679.32 are amended to remove references to the herring PSQ. Incorporation of the herring PSC limit into the MS CDQ fisheries may be considered by the Council and NMFS in a future rulemaking that would allow more time to resolve the conflict between State regulations and NMFS' catch accounting requirements.

Comment 18: CDQ groups should be restricted to pelagic trawl gear only in the 1998 pollock fishery because bycatch in the pollock CDQ fisheries will not accrue against the CDQ and PSQ allocations until 1999.

Response: NMFS agrees. The Council made this recommendation to NMFS at its meeting in April 1996, and the provision was not included in the proposed rule. NMFS adds the requirement into the final rule under the definition of pollock CDQ fishing in § 679.2 and in the prohibitions at § 679.7(d)(24).

Comment 19: If NMFS approves a CDP with a fishing plan that specifies a different procedure for determining CDQ catches, the CDQ group should be able to revert to NMFS' standard estimates by filing a letter of notification to the State with a copy to NMFS if an alternative, higher sampling frequency plan approved by NMFS is attempted but, for some reason, does not work out. The vessel should be authorized to act as the agent of the CDQ group so that immediate action could take place.

Response: A CDQ group could include this type of contingency plan in its proposed fishing plan for NMFS review. No change to the regulations appears to be necessary at this time.

Comment 20: In the preamble to the proposed rule, NMFS stated that a species or species group would be included in the CDQ program's non-specific reserve if the species was low valued, no target fishery currently existed, and a sufficient buffer existed between the TAC and ABC (Acceptable Biological Catch). Given the structure of the overfishing definition, which sets the squid overfishing limit (OFL) equal to the average historical catch, an adequate buffer does not exist; thus, this species should not be part of the non-specific reserve.

Response: The preamble of the proposed rule incorrectly stated the criteria for a species to be considered for the CDQ non-specific reserve. The criteria should have said ''sufficient buffer between the TAC and the overfishing limit'' rather than a ''sufficient buffer between TAC and ABC.'' In the 1998 specifications, neither squid nor the ''other species'' TAC category has a buffer between TAC and ABC because TAC is set equal to ABC. However, a buffer does exist between the TAC and the OFL.

Comment 21: The prohibition against exceeding a CDQ allocation is stricter than the moratorium groundfish fisheries and IFQ fisheries requirements. The CDQ groups will always have to undershoot their quotas and leave substantial amounts of all species unfished. The prohibition will probably limit the CDQ longline cod fishery and some of the trawl flatfish fisheries when no biological or economic rationale exists for doing so. Therefore, NMFS should allow the CDQ participants to discard a particular species once the CDQ is reached rather than require that no CDQ be exceeded. This would be similar to the ''PSC status'' that is allowed in the moratorium groundfish fisheries whereby NMFS places groundfish on PSC status once the TAC is reached.

Response: NMFS disagrees. NMFS approved a Council recommendation that results in an allocation of 7.5 percent of the groundfish TACs (except fixed gear sablefish) to the CDQ program. Allowing the CDQ fisheries to discard a particular species after its CDQ is reached could cause the overall CDQ program to exceed its 7.5-percent allocation. This would violate NMFS and Council intent for the CDQ program. The Council confirmed this intent at its April 1996 meeting. The only exception proposed by NMFS and accepted by the Council was the ''CDQ non-specific reserve.''

Comment 22: The CDQ non-specific reserve is inadequate. The squid bycatch could limit the pollock CDQ fisheries, and skate bycatch could limit the longline cod CDQ fishery. The ''other species'' TAC normally is not reached in the open access fisheries because a large percentage of the cod is taken with trawls with a lower skate bycatch. However, most cod CDQ will be taken with longline in order to reduce halibut bycatch mortality, resulting in more skate bycatch. Two recommendations were made. First, NMFS should not prohibit CDQ groups from exceeding CDQs for squid, arrowtooth flounder, and ''other species,'' all of which are bycatch species with no danger of becoming overfished and with little or no commercial value. Rather, once the CDQ is reached, these species should go on PSC status as they do in the open access fisheries. Second, NMFS should increase the percentage of the squid, arrowtooth flounder, and ''other species'' TACs apportioned from the CDQ reserve to the CDQ non-specific reserve from 15 percent to 50 percent.

Response: As proposed, the CDQ non-specific reserve provides a limited ability for the CDQ fisheries to exceed their 7.5-percent allocation of some species groups. However, NMFS will not increase the apportionment to the CDQ non-specific reserve or allow CDQ groups to exceed CDQs for the reasons stated above in the response to Comment 21.

Comment 23: CDQ groups should be allowed an overage allowance for target species that would come off the following year's quota as is allowed for the IFQ program.

Response: NMFS did not include overage or underage provisions for the CDQ program because none were recommended by the Council or requested by the State of Alaska CDQ program managers. In fact, yearly overages are prohibited as explained in the response to Comments 21 and 22. Underages were not addressed but should have been expected, given the prohibition on overages.

Comment 24: NMFS should allow CDQ groups to substitute halibut CDQ for halibut PSQ. If CDQ groups achieve bycatch savings of halibut PSQ, they should be allowed to harvest the savings as retainable halibut CDQ.

Response: NMFS disagrees. Substitution of halibut CDQ and halibut PSQ would be a significant change in the CDQ program design that NMFS would not make without a recommendation to do so from the Council after analysis and public comment.

Comment 25: NMFS should exempt unobserved halibut CDQ catcher vessels from the requirement to retain and weigh salmon and herring PSC and groundfish bycatch except cod and pollock, which must be retained under Improved Retention/Improved Utilization (IR/IU). The amounts involved are trivial in comparison with the groundfish fisheries overall, but the retention requirement will create a hardship for the small vessels.

Response: See response to Comment 2. NMFS will propose regulations for the small vessel halibut CDQ fisheries in a separate rulemaking.

Comment 26: The proposed rule states that target fishery categories and gear allocations will be dropped for halibut PSQ but is silent on whether the target fishery categories will be dropped for crab PSQs. Will crab PSQ allocations and use be the same as halibut PSQ?

Response: The target fishery designations for allocation of prohibited species bycatch in the moratorium groundfish fisheries will not be used in the CDQ fisheries. However, while the CDQ groups are simply prohibited from exceeding their halibut PSQ, the crab PSQ will be managed with the same time and area closures as the moratorium groundfish fisheries. Therefore, only the catch of crab in the trawl fisheries will accrue to the CDQ group's crab PSQs. The CDQ groups will be prohibited from using trawl gear to harvest groundfish CDQ in (1) Zone 1 after the CDQ group's red king crab PSQ or *C. bairdi* Tanner crab PSQ in Zone 1 is attained, (2) Zone 2 after the CDQ group's PSQ for *C. bairdi* Tanner crab in Zone 2 is attained, and (3) the *C. opilio* Bycatch Limitation Zone (COBLZ) after the CDQ group's PSQ for *C. opilio* Tanner crab PSQ is attained.

A prohibition against using trawl gear in the COBLZ is added. The new *C. opilio* bycatch limit and the COBLZ were added to 50 CFR part 679 (62 FR 66829, December 22, 1997) after the proposed rule for the MS CDQ Program was published.

Comment 27: The proposed constraints on transfer of PSQ and CDQ between CDQ groups are overly restrictive and will prevent the attainment of optimum yield (OY) because a group must cease fishing once any quota is reached and some of the quotas will be very small. CDQ groups need a more timely process for transferring CDQ in season.

In addition to several general comments suggesting more flexible transfer provisions, NMFS received the following specific recommendations:

1. NMFS should allow transfers of more than 10 percent of a group's CDQ and transfers of PSQ with a technical amendment rather than a substantial amendment. Requiring these transfers to undergo the substantial amendment process could result in ''considerable quantities of fish left on the table'' each year;

2. NMFS should allow transfers of 25 mt of CDQ, the equivalent percentage of CDQ allocation, or 10 percent of the CDQ allocation, whichever is greater, with a technical amendment;

3. NMFS should allow transfers of up to 2 percent of a group's PSQ by PSQ species without a concurrent transfer of CDQ and at any time during the year;

4. NMFS should allow submission of amendments to transfer PSQ allocations at any time during the year, and, upon approval, make such transfers effective in the following calendar year.

Response: NMFS included the transfer provisions and restrictions recommended by the Council and supported by the State of Alaska, which makes the original recommendations on CDQ allocations and reviews and approves all amendments to the CDPs before they are sent to NMFS for review and approval. The Council and the State believed that transfers of CDQ or PSQ allocations, transfers of more than 10 percent of a CDQ group's CDQ for any species or species group, or the transfer of PSQ should be made by substantial amendment in order to provide a more comprehensive and extended review of the proposed transfers. As a result, no significant change is made to the CDQ or PSQ transfer provisions set out in the proposed rule (see response to Comment 29).

Comment 28: NMFS received two recommendations on allowing transfers of CDQ and PSQ after an overage had occurred. The first recommendation was a general request to allow transfers after fish have been caught to cover overages. The second recommendation was to allow up to 2 percent of CDQs or PSQs to be transferred after fish have been harvested in the event that one group has a small overage and can transfer it to another group with an equivalent amount of unharvested CDQ. The rationale for the second recommendation was that it would limit the number of enforcement actions necessary for small overages while allowing a higher percentage of the quotas to be taken.

Response: NMFS disagrees and will make no provision for transfers to cover overages of CDQ and PSQ after that catch has occurred because this provision would undermine NMFS' ability to monitor and enforce requirements that CDQ groups not exceed their quotas.

Comment 29: NMFS should require transfers of CDQ allocations, PSQ allocations, CDQ, and PSQ to be in whole integer percentages or amounts to simplify the transfer process.

Response: NMFS agrees and has revised § 679.30(e) accordingly.

Comments on CDQ Recordkeeping and Reporting Requirements

Comment 30: In § 679.5(m) in the proposed rule, NMFS proposed requiring a CDQ representative to submit a check-in/check-out report for each vessel harvesting groundfish and halibut CDQ. NMFS received the following comments about the proposed requirement as it would have applied to catcher/processors and motherships. First, NMFS should allow catcher/processors and motherships to continue to submit the existing check-in and check-out reports required at § 679.5(h) because the proposed CDQ check-in/check-out reports duplicate this requirement. Second, NMFS should require that the check-in/check-out reports be submitted by the vessel operator to NMFS directly, rather than

to the CDQ representative. Submission directly to NMFS would save time and avoid the confusion that may arise from requiring the CDQ representative to be the intermediary between the vessels and NMFS. Third, NMFS should not require that the check-out report be received by NMFS before the vessel can deploy gear in a non-CDQ fishery because the time period between CDQ and non-CDQ fishing is less than an hour in some cases and because vessel operators have no way to determine whether NMFS has received the notification. Fourth, if NMFS continues to require that the check-out report be received before the vessel deploys gear in a non-CDQ fishery, then NMFS should consider allowing the vessel's fax confirmation report to verify receipt by NMFS or allow the submission of the check-out report by electronic mail.

Response: In the final rule, NMFS removed the requirement in §§ 679.5(m) and 679.32(e) of the proposed rule for CDQ check-in/check-out reports for catcher/processors, motherships, and catcher vessels. NMFS determined that the information about eligible vessels in the CDPs, observer coverage, and the existing check-in/check-out reports for processors is sufficient to monitor CDQ fishing activity.

Catcher/processors and motherships participating in the CDQ fisheries will continue to be required to submit the check-in/check-out report at § 679.5(h). NMFS revised the wording of § 679.5(h) to refer to fishing for CDQ species, rather than for each CDQ allocation. The operator of the catcher/processor or mothership is required to submit a check-in report prior to fishing for CDQ species and a check-out report within 24 hours after fishing for CDQ species has ceased. Vessels or processors must file separate check-in/check-out reports for each CDQ group number.

In the final rule, check-in/check-out reports are not required for catcher vessels although they may be considered in the future if measures in this final rule are not adequate.

Comment 31: The requirement for check-in/check-out reports for small catcher vessels in the halibut CDQ fishery is too burdensome because it would be too difficult for the CDQ representative to keep track of the many 18–32 ft (5.49–9.75 m) LOA vessels in short openings spread out over 14 communities and 25,000 square miles (64,750 square kilometers). This requirement would generate much paperwork that would not provide information worth the effort of the vessel owners, the CDQ representative, or NMFS. Two recommendations were received on the check-in/check-out requirement for the halibut CDQ fisheries. First, NMFS could require that the CDQ representative file one check-in report for all vessels at the beginning of the season and one check-out report at the end of the season for all vessels. Second, NMFS could require that check-in/check-out reports be submitted only by vessels over a minimum size of 30 ft (9.14 m).

Response: The final rule has been changed to remove the requirement for CDQ check-in/check-out reports. See response to Comment 30.

Comment 32: The proposed requirement to submit a CDQ catch report for each vessel each week that CDQ fishing occurs is excessive for small vessels fishing for halibut CDQ. NMFS might consider combining skiffs under a CDQ permit into a CDQ group fleet catch report.

Response: See response to Comment 2. In 1998, vessels participating in the halibut CDQ fisheries will continue to submit reports to NMFS Enforcement under the IFQ program. CDQ representatives are not required to submit information about halibut CDQ reported under the IFQ program reporting requirements on the CDQ catch report in 1998.

Comment 33: NMFS should use the shoreside processor's weekly production report (WPR) as a weekly report of CDQ catch.

Response: NMFS requires information about the weight and numbers of all CDQ and PSQ species landed by each vessel fishing under a CDP. The shoreside processor's WPR provides the total CDQ and PSQ landed by all vessels fishing under a CDP each week, but it does not provide detail for the individual vessel's landed catch. In addition, the CDQ catch report is required to be submitted by the CDQ representative on behalf of the CDQ group that has received the groundfish CDQ allocation. The report must be signed and submitted by the CDQ representative to verify to NMFS that the CDQ group acknowledges the CDQ and PSQ catch made by vessels and processors under its CDP.

Comment 34: In § 679.32 of the proposed rule, NMFS proposed to use the Alaska Department of Fish and Game (ADF&G) fish ticket as a record of the catch weight and numbers for CDQ and PSQ landed at shoreside processors. However, ADF&G fish tickets are not designed to report halibut PSQ discarded at sea.

Response: The final rule contains a change in this requirement. Rather than using an ADF&G fish ticket, each shoreside processor must submit a CDQ delivery report for each delivery of CDQ and PSQ. NMFS determined that ADF&G fish tickets would not provide adequate landings records for several reasons. First, ADF&G fish tickets are used primarily to report the weight of fish purchased by the processor and are less reliable for documenting the weights of fish that are delivered but not purchased either due to economic reasons or for being prohibited species. Second, ADF&G fish tickets are not available to NMFS soon enough to be used to monitor landings in-season. Finally, NMFS requires information about each CDQ delivery to link with the observer report from the same delivery so that information about at-sea discards of CDQ and PSQ can be quickly and accurately combined with delivery information from the processor.

As a result of these comments, the following changes have been made in this final rule:

1. The requirements for the CDQ delivery report are added to § 679.5(n)(1). A CDQ delivery report is required to be submitted by shoreside processors for each groundfish CDQ delivery. The processor must include the vessel's CDQ delivery number on the CDQ delivery report.

2. In § 679.32(c), the ADF&G fish ticket is removed as one of NMFS' standard sources of data for deliveries to shoreside processors.

Comment 35: If CDQ groups are required to report information about vessels fishing under their CDPs, NMFS should extend the reporting deadline from 24 to 48 hours after the vessel reporting deadline to allow time for information to get from the vessel to the CDQ group and to NMFS.

Response: NMFS changed the deadline for receipt of the CDQ catch report § 679.5(n)(2) to ''within 7 days of the date CDQ catch was delivered by a catcher vessel to a shoreside processor, buying station, or mothership or within 7 days of the date gear used to catch CDQ was retrieved for catcher/processors.'' This change should allow the CDQ groups sufficient time to get information from the processor or vessel reports if it is needed, although NMFS expects that most data used by the CDQ representative will come from observer reports rather than from vessel or processor reports submitted to NMFS.

Comment 36: NMFS should require that the catch of halibut and sablefish CDQ be reported in pounds, rather than to the nearest 0.001 mt.

Response: Currently, halibut and sablefish CDQ catch reported to NMFS Enforcement under the IFQ regulations may be reported in pounds or kilograms as required for the IFQ landings report. Reporting requirements for halibut CDQ

after 1998 will be addressed in a future rulemaking. See response to Comment 2.

Any CDQ catch reported on the CDQ delivery report or CDQ catch report at § 679.5(n) must be reported in metric tons to the nearest 0.001 mt, as is required for weekly production reports. Allowing CDQ representatives to chose among options for the units of measurement that may be used would increase reporting and data entry errors and complicate the CDQ information system.

Comment 37: NMFS should provide an alternative to supplying vessel name on CDQ reports because many skiffs do not have names.

Response: The requirement to submit the vessel name on the CDQ reports is changed in the final rule to read ''vessel name, writing 'unnamed' if the vessel has no name.''

Comments on the CDQ Observer, Observer Duties, and Observer Coverage Requirements

Comment 38: NMFS should not create a special category of observer for the MS CDQ fisheries. NMFS has not demonstrated that successful data collection on MS CDQ vessels will require specialized observers and additional observer training. Specifically, it is unclear that the needs of the MS CDQ Program will be different from the needs of the current pollock CDQ fishery, for which specialized training is not required. NMFS has rated the observers in the pollock CDQ fisheries as acceptable or better, demonstrating that these observers have been capable of meeting the demands of the pollock CDQ fisheries. The MS CDQ fisheries do not require any better or more experienced observers than those required by the open-access fisheries.

The responsibilities of MS CDQ observing are not significantly different from those for the other fisheries. On vessels with two CDQ observers, each observer would have less work to do. In addition, implementation of electronic reporting of observer data and scales to weigh catch on some processor vessels will reduce observer workload. Rather than requiring that vessels carry a specially trained, designated CDQ observer, NMFS should revise current observer training and briefing to prepare all observers for the requirements of the multispecies CDQ fisheries.

Response: NMFS disagrees. The MS CDQ Program does require specialized observers and additional observer training because the demands of the MS CDQ Program will be very different from the current pollock CDQ fishery. For many MS CDQ vessels, estimates based on observer data will be used as the primary source of information about the catch of all species, including prohibited species. In order to fulfill the responsibility of determining CDQ and PSQ catch, the MS CDQ observer must have both prior experience as an observer and training specific to the CDQ program. Additionally, the equipment requirements and recordkeeping and reporting requirements, with which the MS CDQ observer must be familiar, will be different in the MS CDQ fisheries from the existing requirements for the CDQ and IFQ fisheries and for the moratorium groundfish fisheries.

Comment 39: NMFS has inadequate infrastructure to provide the support CDQ observers will need. Observers in the CDQ fisheries will have an increased compliance monitoring role, which will lead to increased pressure from vessel operators and processors. Observers need to know that they will be supported by NMFS if they are being pressured in any way. The NMFS Observer Program and Enforcement Office will need additional staff to address problems that will arise with the multi-species CDQ program. How will NMFS address these additional needs?

Response: NMFS has received approval for additional staff and funding for the North Pacific Groundfish Observer Program to implement the MS CDQ Program and to support observers in the demanding role of a CDQ observer. In addition, equipment requirements such as scales to weigh total catch and observer sampling stations will provide additional tools to assist CDQ observers in estimating CDQ and PSQ catch.

Comment 40: Observers could suffer financially under the proposal to create a special category of observer for the CDQ fisheries. Contractors may not deploy persons qualified as CDQ observers on non-CDQ trips in order to have them available if a CDQ observer is needed. As a result, lead CDQ observers may be able to work only 2 to 3 weeks out of each season.

Response: NMFS disagrees. Certification as a CDQ observer will increase the types of observer employment that an individual is qualified for and should, therefore, improve his or her financial situation.

Comment 41: The proposal to create a special category of observers for the CDQ fisheries will increase costs to observer contractors and to the fishing industry. Observer contractors will have less flexibility when deploying observers because fewer observers will be qualified as CDQ and lead CDQ observers. The special training for CDQ observers will increase training costs, which will be passed on to the fishing industry. Observer travel costs will increase. Vessels face possible down time if the CDQ observers are not immediately available.

Response: NMFS agrees that requirements for CDQ observers may increase costs to participants in the CDQ fisheries and may reduce the flexibility of observer contractors. However, it is anticipated that sufficient numbers of CDQ observers will be available and vessels should not experience a delay due to a lack of CDQ observers (see responses to Comments 44 and 45.) The CDQ observer is necessary to implement the MS CDQ Program.

Comment 42: The proposal to create a special category of observers for the CDQ fisheries will negatively impact the overall quality of data collected for other groundfish fisheries, because experienced observers will be concentrated in CDQ fisheries.

Response: NMFS disagrees that requirements for the CDQ observers will reduce the quality of observers or observer data collected in the other groundfish fisheries. Many factors contribute to the overall quality of observer data, including certification requirements, training, compensation, working conditions, and NMFS support. NMFS is pursuing improvements to some of these factors through separate development of policy and rulemaking. The requirement for CDQ observers alone is not expected to have a significant negative effect on the number or quality of observers available for non-CDQ fisheries. In addition, CDQ observers will not be required to work in CDQ fisheries all the time and will continue to be available for the non-CDQ fisheries.

Comment 43: NMFS requires at least one lead CDQ observer on all vessels. What is the difference in responsibilities between the CDQ observer and the lead CDQ observer on a vessel with two observers?

Response: The sampling duties will be similar between the lead CDQ observer and other CDQ observers. Each will be expected to work a 12-hour shift. However, the lead observer will be the liaison person between the vessel and NMFS and will be responsible for determining whether any impediments to sampling exist and for resolving problems with sampling or data collection. The lead CDQ observer will be responsible for ensuring complete and correct data and will carry this responsibility through the debriefing process.

Comment 44: If qualified CDQ observers are not available, NMFS should waive the requirement for two CDQ observers or should reduce the requirements for CDQ observers.

Response: NMFS disagrees. The requirements for a CDQ observer are based on the anticipated needs of the CDQ program. NMFS believes that a sufficient number of observers meet the requirements for certification as CDQ observers (see response to Comment 45). Therefore, waivers or changes to the requirements for CDQ observers should not be necessary.

Comment 45: NMFS received the following comments about the proposed experience requirements for CDQ observers and lead CDQ observers:

1. NMFS proposed that one of the requirements for a CDQ observer be that he or she must have completed at least 60 days of observer data collection on a vessel using the same gear type as the CDQ vessel on which he or she will be deployed. NMFS should require instead that the CDQ observer have experience in the type of sampling and the type of fishery he or she will be observing in the CDQ fisheries.

2. NMFS proposed that the lead CDQ observer be required to complete at least 20 days of observer data collection on a vessel participating in a CDQ fishery in addition to the other requirements for a CDQ observer. The experience requirement for a lead CDQ observer should be a minimum of one full contract, rather than 20 days.

3. If all pot catcher vessels are required to have one CDQ observer who must be a lead CDQ observer, how do non-lead CDQ observers ever get the opportunity to qualify as lead observers for pot catcher vessels?

4. Do enough people exist with the qualifications required for CDQ observer to supply the number of CDQ and lead CDQ observers that will be necessary?

Response: After examining the work history for current observers, NMFS decided to reduce the experience requirements necessary for CDQ observers in order to increase the number of current observers who would be eligible to apply for certification as a CDQ observer. Section 679.50(h)(1)(i)(D) and (E) were changed as follows:

1. The CDQ observer is required to have 60 days of observer data collection experience, in general, rather than 60 days of experience in the same gear type as the CDQ vessel on which he or she will be deployed; and

2. The requirement for sampling experience on a vessel with the same gear type as the CDQ vessel on which the observer will be deployed now applies only to the lead CDQ observer.

3. The lead CDQ observer is no longer required to have 20 days of observer data collection on a vessel participating in a CDQ fishery.

The following table summarizes the experience requirements for CDQ observers (this does not include rating, training, or other general performance requirements):

The following table summarizes the experience requirements for CDQ observers (this does not include rating, training, or other general performance requirements):

CDQ observer classification	Experience requirements
All CDQ observers	60 days observer data collection.
Additional requirements for ''Lead'' CDQ Observers:	
Lead on catcher/processor (c/p) using trawl gear or a mothership.	2 cruises and sampled at least 100 hauls on a c/p using trawl gear or a mothership.
Lead on catcher vessel using trawl gear	2 cruises and sampled at least 50 hauls on a catcher vessel using trawl gear.
Lead on vessel using nontrawl gear	2 cruises of at least 10 days each and sampled at least 60 sets on a vessel using nontrawl gear.
Lead in shoreside plant	Observed at least 30 days in a shoreside processing plant.

In response to part 3 of this comment, under the proposed rule, a catcher vessel using pot gear would have been required to have a lead CDQ observer. In order to qualify as a lead CDQ observer for this vessel under the proposed rule, a person would have been required to have the following observer experience: (1) At least 60 days of observer data collection on a vessel using pot gear and (2) at least 20 days of experience on a vessel in a CDQ fishery. The commenter is expressing concern about how a non-lead CDQ observer (a person who had met the 60 days of pot gear experience) would be able to obtain the experience necessary to become a lead CDQ observer (a person with 20 days experience in the CDQ fisheries).

Under the proposed rule the requirement for 20 days experience in a CDQ fishery could have been obtained on a vessel using any gear type, as long as it was CDQ fishing. Under the final rule, these experience requirements are more flexible. The pot catcher vessel still is required to have a lead CDQ observer, but the experience requirement has changed to be as follows: (1) At least 60 days of observer data collection (no specific gear requirement for this experience), and (2) two cruises of at least 10 days each on a vessel using nontrawl gear in which the observer sampled at least 30 sets per cruise. Non-lead CDQ observers must get their 60 days of observer data collection experience in the non-CDQ groundfish fisheries. Lead CDQ observers may obtain their experience with specific gear types in either the CDQ or non-CDQ fisheries. Observer experience on vessels using longline, pot, or jig gear counts toward the nontrawl gear experience requirement.

Comment 46: NMFS proposed that one of the requirements for a CDQ observer be that he or she have received ''the rating of 1 for ''exceptional'' or 2 for ''meets expectations'' by NMFS for his or her most recent deployment.'' The NMFS rating system is 2 for ''exceptional'' and 1 for ''meets expectations.''

Response: The proposed rule was incorrect, and § 679.50(h)(1)(i)(D)(*2*) has been corrected to state that the CDQ observer must have received the rating of 1 for ''meets expectations'' or 2 for ''exceptional'' by NMFS for the most recent deployment. This requirement provides that only observers in good standing are eligible for certification as CDQ observers, which are the majority of observers deployed over the last 3 years. Those observers who would be ineligible as CDQ observers are those either under suspension pending review for decertification or in probationary status.

Comment 47: The NMFS rating system for observers does not appropriately indicate whether a person will be a competent CDQ observer. Unless the rating and evaluation system is drastically revised, it should not be used as an employment indicator for the CDQ program.

Response: NMFS believes that using the observer evaluation system is appropriate because it is only one component of determining whether an

observer will be a competent CDQ observer. The rating will be used to determine whether an observer meets the minimum qualifications for a CDQ observer. However, evaluation of competency will occur primarily during training and through continued performance evaluations.

Comment 48: In § 679.50(c)(4) of the proposed rule, NMFS proposed that no CDQ observer could be required to be on duty for more than 12 hours in a 24-hour period, to sample for more than 9 hours in a 24-hour period, or to sample more than three hauls in a 24-hour period on a vessel using trawl gear or a processor taking deliveries from vessels using trawl gear.

NMFS received several comments opposed to the proposed requirement that all hauls be sampled by an observer for species composition and that each observer be required to sample no more than three hauls each 24-hour period. This proposed requirement would limit trawl catcher/processors to six hauls per day. Most comments opposed this proposal because operators of catcher/processors want to make small hauls or ''test'' hauls to check the species composition of fish available for harvest in a particular area. The commenters stated that this practice allows them to minimize the bycatch and discard of undesired or prohibited species. Therefore, the limit of six hauls per day will likely increase bycatch and discards and increase the mortality rate of discarded catch. In addition, NMFS received comments that the fish quality declines when fish are harvested in large hauls or hauls towed for a long time. Catcher/processors that head and gut their product currently aim for hauls that average 10 mt and make between 8 and 10 hauls per day. In order for these vessels to continue both to take small test hauls and to maintain production levels while complying with a six hauls per day limit, vessels would be required to take some hauls as large as 30 mt to 50 mt.

In addition to the general recommendation that NMFS remove the limitation on the number of hauls that could be sampled, two other suggestions were made. First, NMFS should work with each vessel individually to develop a catch accounting plan through the CDQ permit process. Second, NMFS should establish a threshold for the number or percentage of hauls that must be observed.

Response: NMFS agrees that the limitation on the number of hauls that can be sampled by an observer is not sufficiently flexible for the variety of fishing situations that may be experienced on all trawl catcher/processors. Therefore, in the final rule, the limitation that an observer may sample only three hauls per shift has been removed. However, the requirement that all hauls or sets on catcher/processors must be sampled by an observer remains, as do the limitations on the number of hours that the CDQ observer is required to work each day.

A CDQ group will be required in its CDPs to demonstrate that vessels fishing under the CDPs have sufficient observer coverage to sample each haul or set. The final rule requires additional information to be submitted with the fishing plan in the CDP to provide NMFS with information to evaluate whether the requirement to sample each haul or set on each eligible vessel can be met with the minimum number of CDQ observers. The additional information that must be submitted includes (1) the number of CDQ observers that will be aboard the vessel; (2) the average and maximum number of hauls, sets, or pots that will be retrieved each day; (3) the average and maximum estimated total catch weight for each haul for vessels using trawl gear; (4) the time necessary to process the average and maximum haul size for vessels using trawl gear; and (5) the average number of hooks in each set and estimated time it will take to retrieve each set for vessels using hook-and-line gear.

Comment 49: NMFS' proposal to limit observers to being on duty for 12 hours per day and sampling no more than 9 hours per day does not give the observer credit for the amount of work they have already demonstrated they can do.

Response: NMFS recognizes that many observers work more than the limitations proposed for the MS CDQ Program. However, the need to sample each haul or set on catcher/processors requires a limit on the ability of the vessel to make sampling demands on observers.

Comment 50: Has NMFS determined the average number of hauls in a 24-hour period expected in each CDQ fishery? Does NMFS have any assessment of how this average may vary with vessel size, if it varies at all?

Response: NMFS has not performed this type of analysis. Our recommendations for the number of hauls that could be sampled by an observer in a 12-hour shift were based on NMFS staff estimates of the average observer workload requirements.

Comment 51: Will the number of unobserved hauls increase if NMFS limits the number of observed hauls to six per day?

Response: The final rule does not include the limit on the number of hauls that may be observed (see response to Comment 48). However, § 679.32(d) does require that all hauls and sets on observed vessels be sampled for species composition.

Comment 52: NMFS should require that one haul or set per observer's shift should be a partial-haul sample for prohibited species.

Response: NMFS will request that CDQ observers take as large a sample as possible from each haul while also ensuring that he or she samples each haul and set during his or her shift. Equipment requirements such as the scale to weigh total catch and the observer sampling station should allow the observers to take larger samples. However, NMFS will not place any additional specific requirements about the size or method of sampling in regulation.

Comment 53: NMFS should allow sorting by the crew with monitoring by the observer on catcher/processors to increase sample sizes and better provide for enumeration of all prohibited species, rather than depending on extrapolation from a limited number of relatively small basket samples.

Response: Current regulations at § 679.50(f)(1)(viii) require that the vessel crew assist the observer in sampling when requested to do so. NMFS also will review any proposals in the CDP that would provide for assistance from the crew to produce larger sample sizes. NMFS may approve CDP proposals for the vessel crew to perform sampling, sorting, and species identification with appropriate observer monitoring of the process to provide independent verification of catch. Also see the response to Comment 52.

Comment 54: In § 679.32(d)(4)(iv) of the proposed rule, NMFS proposed that ''each CDQ set or pot must be sampled by a CDQ observer for species composition and average weight.'' It is not possible to sample each and every pot.

Response: NMFS agrees. In the final rule, the requirement to sample each pot is removed. The observer will be requested to sample as many pots in the set as possible to estimate species composition.

Comment 55: NMFS should allow the use of grid sorting to reduce the mortality of halibut bycatch in the CDQ fisheries provided that International Pacific Halibut Commission and observer program requirements are met.

Response: Grid sorting has been discussed by the Council as an alternative to reduce the mortality of halibut bycatch. If NMFS implements

regulations allowing grid sorting in the future, these regulations would likely apply to all groundfish fisheries, including the CDQ fisheries. Until then, pre-sorting of halibut bycatch by the crew is prohibited.

Comment 56: NMFS should establish a provision to review the effects of the CDQ observer requirements on the quantity and quality of observer data in the groundfish and halibut CDQ fisheries.

Response: NMFS will evaluate the results of all requirements for the CDQ program, including the requirement for CDQ observers. However, it may be difficult to perform the specific evaluation requested because of the many other factors that affect the quantity and quality of observer data and the priority of this type of evaluation relative to other responsibilities of NMFS staff.

Comment 57: In the event that an observer's error is found during debriefing results in a significant recalculation of harvest, NMFS should not penalize vessel operators or CDQ groups that have relied on the observer data in good faith.

Response: NMFS will make every effort to minimize observer errors and to identify and correct them as soon as possible. If the error results in calculations that reduce the estimate of CDQ catch, that amount of fish, i.e., the difference between the estimate of caught fish and the CDQ, will then be available for harvest by the CDQ group. If the error results in calculations that increase the estimate of CDQ catch that then results in a CDQ overage, NMFS will consider all of the reasons for the overage in determining whether to pursue enforcement action against the CDQ group.

Comment 58: The catch accounting and monitoring system proposed for the MS CDQ Program is also being considered for use in other fisheries and FMPs in the future. In the final rule, NMFS should discuss the anticipated trade-offs and problems this proposal may create.

Response: The catch accounting system implemented for the MS CDQ Program is not necessarily the system that would be used for other individual vessel monitoring programs. The role of the State of Alaska, as a co-manager of the CDQ fisheries, and the requirement that CDQ groups apply for CDQ allocations every 3 years are among the important features that distinguish the MS CDQ Program from other proposed individual vessel monitoring programs. The catch monitoring and enforcement systems for other fishery management programs will be developed based on the needs and characteristics of those programs and participants. NMFS anticipates that experience with the MS CDQ Program catch monitoring and enforcement will provide valuable information about whether the catch monitoring program implemented for the groundfish CDQ fisheries should be applied to other programs.

Comment 59: NMFS should clarify in § 679.32(f)(4) that catcher vessels equal to or greater than 60 ft (18.29 m) LOA that deliver unsorted codends to processor vessels are not required to carry an observer during their CDQ fisheries.

Response: NMFS revised paragraphs (c), (d), and (f) in § 679.32 to include catcher vessels delivering unsorted codends as unobserved vessels.

Comment 60: Processors taking deliveries of Pacific cod or rockfish delivered with halibut CDQ should be required to comply with NMFS' requirements for a Federal processor permit and NMFS' observer coverage. These processors should not be exempt from this requirement under the MS CDQ Program.

Response: Current regulations at § 679.4(f) require all shoreside processors that take deliveries of groundfish harvested in the EEZ of the GOA or BSAI or deliveries from vessels with Federal fisheries permits to obtain a Federal processor permit. Therefore, shoreside processors receiving groundfish harvested in halibut IFQ or CDQ fisheries by vessels that do not have Federal fisheries permits and have fished only in Alaska State waters would not be required to have a Federal processor permit. NMFS observer coverage requirements for the general groundfish fisheries apply only to shoreside processors with a Federal processor permit. No changes to these regulations are made in this final rule.

Comment 61: Shoreside processors processing only halibut should be exempt from observer coverage requirements as is the current practice. Many of the halibut processors are very small operations, and the imposition of additional costs will have a large impact on the ability of these facilities to operate. There have been no reported problems with the accounting of halibut CDQ. It is unlikely that there will be enough work to keep the observers busy.

Response: This final rule contains no requirements for observer coverage for shoreside processors or registered buyers taking deliveries of only halibut. As stated in the response to Comment 2, NMFS will consider management measures for the halibut CDQ fishery in 1999 and beyond in a separate rulemaking.

Comment 62: Shoreplants processing less groundfish than a specified minimum should be exempt from CDQ observer coverage requirements as is done for the moratorium groundfish fisheries.

Response: NMFS disagrees. All deliveries from vessels fishing for groundfish CDQ must be observed by a lead CDQ observer in the shoreplant regardless of the observer coverage on the vessel. As stated in the response to Comment 2, NMFS will consider management measures for the halibut CDQ fishery in 1999 and beyond in a separate rulemaking.

Comment 63: NMFS should require two observers in shoreside plants for observer coverage around the clock, and those observers should have the same responsibility as observers at sea, i.e., full sampling responsibilities, and not simply a monitoring function.

Response: NMFS disagrees. No change is made in the final rule. The CDQ observer in the shoreplant will be required to monitor the sorting and weighing of all CDQ and PSQ species to verify that accurate delivery weights are reported on the CDQ delivery report.

Comment 64: In § 679.50(c)(4)(i), NMFS proposed to require that a mothership or catcher/processor of any length must have at least two CDQ observers, at least one of whom must be certified as a lead CDQ observer. This is a one-size-fits-all rule that fails to take into account the differences between vessels and gear type. On certain size vessels, it will not be possible to have two observers, because there is insufficient room. One result of this regulation is to limit the size and type of catcher/processors CDQ groups can use. This may result in forcing CDQ groups to cease using longline catcher/processors for their Aleutian Islands sablefish CDQ, since most of those vessels cannot carry two observers. The additional cost is an unnecessary burden on longline catcher/processors. These vessels harvest fish one at a time, which is very different from the large tows associated with trawl catcher/processors.

The following specific recommendations were made:

1. NMFS should require that longline catcher/processors less than 125 ft (38.10 m) LOA carry only one CDQ observer and allow the Regional Administrator (RA) to require a second observer at his or her discretion.

2. NMFS should require that longline catcher/processors of any size carry only one CDQ observer and allow the RA to require a second observer at his or her discretion.

Response: NMFS agrees that, under some circumstances, two observers may not be necessary on catcher/processors using nontrawl gear. Therefore, NMFS made the following changes in the final rule.

1. Section 679.50(c)(4) was changed to require two CDQ observers on catcher/processors of any length using hook-and-line gear, unless NMFS approves a CDP authorizing the vessel to carry only one CDQ observer, who must be certified as a lead CDQ observer. A CDP authorizing the vessel to carry only one CDQ observer will be approved by NMFS if the CDQ group supplies logbook or observer data for that vessel (from CDQ or non-CDQ fisheries for the same species, gear, and areas) that demonstrate that one CDQ observer can sample each set for species composition in one 12-hour shift per fishing day. NMFS will not approve a CDP that would require observers to divide his or her 12-hour shifts into shifts of less than 6 hours, because this would not allow the observer sufficient time to sleep.

2. Section 679.50(c)(4) was changed to require catcher/processors of any length using pot gear to have one lead CDQ observer, rather than two CDQ observers.

Comment 65: Longline catcher vessels less than 125 ft (38.10 m) LOA should have the same observer coverage requirements as the fixed gear halibut and sablefish IFQ fisheries. A discrepancy exists between approved IFQ regulations and proposed CDQ regulations: The same vessel could fish IFQ without observers yet be required to carry two observers for CDQ. In both instances, the vessel would be fishing against a defined quota, which requires an exact catch measurement for enforcement purposes. If there is going to be a difference, it should be justified sufficiently to warrant the imposition of a more burdensome regulation on one component of the same fishery.

Response: The catch monitoring requirements for the fixed gear halibut and sablefish IFQ fisheries and the MS CDQ fisheries are different. The IFQ fisheries require accounting of the catch of retained halibut and sablefish only. When these species are retained, NMFS Enforcement can check deliveries or product transfers to verify the accuracy of IFQ landings reports. The multispecies CDQ fisheries will require accounting for all catch, including prohibited species and other groundfish discarded at sea. The reliance on observer data and the source of data about CDQ and PSQ catch on these vessels warrant the additional observer coverage.

Comment 66: If longline catcher vessels between 60 ft (18.29 m) and 125 ft (38.10 m) LOA participating in the fixed gear halibut and sablefish CDQ fisheries are required to carry one CDQ observer, this requirement should be delayed until 1999.

Response: NMFS proposed that these observer coverage requirements would not be effective until January 1, 1999. These requirements are not changed in the final rule.

Comments on Equipment Requirements

Comment 67: The Magnuson-Stevens Act exempts longline catcher/processors from being required to weigh their catch on a scale.

Response: NMFS disagrees that section 312(h) of the Magnuson-Stevens Act (16 U.S.C. 1862(h)) exempts any vessel from requirements to weigh catch if these requirements are recommended by the Council and approved by the Secretary of Commerce. This section does, however, state that the Council should recommend measures to assist processors and processing vessels to acquire scales, unless the Council determines that such weighing is not necessary. The Magnuson-Stevens Act provides the Council authority to recommend scales on any type of fishing or processing vessel.

Comment 68: NMFS received comments opposing the proposed requirement that catcher/processors using trawl gear and motherships weigh total catch in the CDQ fisheries on a scale approved by NMFS under § 679.28. General comments stated that scales to weigh catch at sea are not necessary to determine the weight of CDQ catch. One comment stated that product recovery rates should be sufficient to estimate the weight of species, such as flatfish, for which the overfishing limit is well above the TAC.

Response: NMFS has determined that scales to weigh total catch on catcher/processors using trawl gear and motherships are necessary to manage the multispecies groundfish CDQ fisheries to obtain more accurate and verifiable catch weight estimates. The Council recommended the use of scales in the BSAI pollock fisheries in September 1994, and the Magnuson-Stevens Act authorizes the Council to recommend the use of scales. Although volumetric-based methods currently are used by observers and could be used in the CDQ fisheries, an accurate scale weight is preferred by NMFS because it shifts the responsibility for estimating total catch weight from the observer to the vessel operator. Volumetric estimates place the responsibility primarily on the observer. On many vessels, the equipment or operational situation does not provide the observer with the conditions necessary to obtain a good estimate of the volume or the density of fish. If the vessel operator disagrees with the process or outcome of the observer's volumetric estimate, pressure could be placed on the observer. However, if a scale is used to weigh catch, the observer's role is to monitor the use of the scale, and the vessel operator is responsible for maintaining and using the scale properly, testing the scale, and reporting the scale weights.

Because attainment of CDQs or PSQs will require the vessels fishing for a CDQ group to stop fishing sometimes before quotas for all species are reached, the pressure on observers in the MS CDQ fisheries is likely to be even greater than that on observers in other fisheries. NMFS expects that vessel operators will pay much closer attention to the observer data than they do in the moratorium groundfish fisheries, because their individual fishing activity will be decided based upon these data (unless some other method is approved by NMFS in the CDP). A scale to weigh total catch will increase the amount of information used to manage the CDQ fisheries that comes from the vessel operator, rather than from the observer.

Product recovery rates are used only to estimate the weight of retained catch. They are not appropriate as a method for estimating the total catch of CDQ species because they do not account for the weight of catch that is discarded prior to processing.

Comment 69: Some vessel owners may not be able to install scales, either due to space constraints on the vessel or due to the cost of the scale. A scale may not be capable of weighing accurately on small catcher/processors, because the vessels pitch and roll so much in bad weather. These scale requirements may prevent fishing companies that already have contracts with CDQ groups from being able to participate in the CDQ fisheries.

Response: NMFS has determined that a scale is necessary on all catcher/processors using trawl gear and on motherships for the reasons stated in the response to Comment 68. Processor vessels that cannot meet the installation, use, and daily testing requirements for a scale to weigh total catch will not be permitted to participate in the CDQ fisheries, regardless of any contracts with a CDQ group. Participation in the CDQ fisheries is voluntary and regulations governing the CDQ fisheries do not preclude these vessels from continuing to fish in the moratorium groundfish fisheries.

Comment 70: NMFS has underestimated the costs of installing a scale. The purchase of the scale and redesign of one vessel is estimated to cost approximately $500,000.

Response: In the proposed rule, NMFS estimated that the purchase of a scale may cost between $30,000 (hopper scales) and $50,000 (belt-conveyor scales). Installation costs will vary depending on the type of scale selected, the modifications necessary to accommodate the scale, and changes in the sorting and discarding operations. NMFS estimated that installation of an at-sea scale could cost from $5,000 to $250,000 per vessel and that the installation of the scale could also reduce the efficiency of the fish processing factory, particularly if processing equipment had to be relocated. The installation estimates were based on discussions with vessel owners and businesses that design fish processing factories. However, specific estimates of the purchase and installation of scales on particular processor vessels were not undertaken. NMFS acknowledges the uncertainty associated with the estimates and cannot either confirm or refute the cost estimate made in this comment. Participation in CDQ fisheries is voluntary and NMFS anticipates that only those vessels for which participation is cost-effective will chose to fish for CDQ.

Comment 71: The following comment was received about the impact on small entities of the requirement that catcher/processors using trawl gear and motherships weigh CDQ catch on a scale approved by NMFS (text in italics added by NMFS for clarification).

> We understand that NMFS has never done other than a finding of no significant impact (FONSI) when looking at effects of regulations under the standards of the Regulatory Flexibility Act. However, we feel certain that the agency must find a significant impact from this certification regulation and the ensuing regulations which specify who must comply with this one (*scale requirement*). The additional cost of the compliance of my vessels with these regulations will be considerably more than the ten-percent used by NMFS as a marker. And a quick review of the vessels doing CDQ indicate that more than 20% will be significantly impacted.

Response: The Regulatory Flexibility Act (RFA) requires NMFS to consider the capacity of those affected by regulations to bear the direct and indirect costs of regulation. If an action will have a significant impact on a substantial number of small entities, an Initial Regulatory Flexibility Analysis (IRFA) must be prepared to identify the need for the action, alternatives, potential costs and benefits of the action, the distribution of these impacts, and a determination of net benefits. NMFS standards for determining whether an action is likely to have a significant economic impact on a substantial number of small entities are outlined in the Classification section of this rule.

Four of the 58 catcher/processors using trawl gear in the BSAI groundfish fisheries are considered small entities because they are fish-harvesting businesses that are independently owned and operated, not dominant in their field of operation, and probably have annual receipts not in excess of $3,000,000.

NMFS estimates that up to 37 of the 58 catcher/processors using trawl gear in the BSAI groundfish fisheries will participate in the MS groundfish CDQ fisheries, including all 4 of the catcher/processors determined to be small entities. Furthermore, NMFS has determined that these small entities may be significantly impacted by the observer coverage and equipment requirements, because these costs could reduce annual gross revenues by more than 5 percent, could result in compliance costs as a percent of sales for small entities that are at least 10 percent higher than compliance costs as a percent of sales for large entities, or could result in capital costs of compliance that represent a significant portion of capital available to small entities, considering internal cash flow and external financing capabilities. In addition to these 4 catcher/processors using trawl gear, NMFS determined that an additional 29 of the small entities expected to participate in the MS groundfish CDQ fisheries also may be significantly impacted by observer and equipment requirements for the MS CDQ fisheries. Additional information about these other small entities is included in the Classification section of this final rule and in a Supplemental Regulatory Impact Review available from NMFS (see **ADDRESSES**).

However, although NMFS has determined that the MS CDQ monitoring regulations may have a significant economic impact on approximately 33 of the expected participants in the MS groundfish CDQ fisheries, these regulations will not impact a ''substantial number'' of small entities in the universe of 403 small entities. NMFS generally considers a substantial number to be 20 percent or more of the universe of small entities. The 33 vessels that could experience significant economic impacts as a result of this rule constitute only 8.2 percent of the universe of affected small entities (403).

In addition, participation in the CDQ fisheries is voluntary. CDQ groups, vessels, and processors are expected to participate only if the CDQ fisheries would generate some net economic gain for their business. They would not be expected to participate in the CDQ fisheries if that participation would result in significant negative economic impact.

Comment 72: NMFS should not require scales until more research is done on whether scales will weigh accurately on all vessel types and sizes and in the range of environmental conditions that occur at sea. Scales have not been proven to weigh accurately on all vessels and under all conditions that will be experienced in the BSAI.

Response: NMFS cannot guarantee that scales will weigh accurately on all vessels and under all conditions and is not setting this as a condition for implementing the scale requirement in the CDQ fisheries. Rather, NMFS has determined that CDQ catch made by catcher/processors using trawl gear or delivered to motherships must be weighed on a scale that meets the requirements of § 679.28(c). No exemptions or exceptions will be made. If a scale on a vessel cannot meet these standards for any reason, even reasons relating to the type or size of vessel or the weather or sea conditions, the vessel should not participate in the CDQ fisheries; if it does, it will be in violation of NMFS regulations.

Comment 73: NMFS should allow the use of other methods, such as volumetrics, if a scale fails an at-sea scale test or the scale malfunctions. It is unreasonable to expect the vessel to return to port in the middle of a trip.

Response: NMFS will not allow the use of volumetric methods as a back-up in case the scale fails an at-sea test or malfunctions. Such an allowance would undermine the requirement to weigh all catch on a scale. Catcher/processors using trawl gear and motherships are required to weigh all catch in the CDQ fisheries on a scale approved under, and meeting all of the operational requirements of, § 679.28(c).

Comment 74: NMFS should require that total catch weight estimates on processor vessels meet a standard for accuracy, rather than prescribe a method such as weighing on a scale. Regulations should specify a result and not a method.

Response: NMFS interprets this suggestion to mean that NMFS should specify a level of accuracy that must be achieved in catch weight estimation and allow vessel operators to demonstrate

that this level of accuracy has been met. Although no specific proposals were set forth, NMFS does not believe that this type of approach could be implemented. If NMFS specified, for example, that total catch weight must be determined to within 3 percent of its known weight, how would a vessel owner demonstrate that the volumetric or production-based method being used achieved this level of accuracy?

Volumetric estimates are a product of the estimate of the volume of fish in a net or holding bin in cubic meters and the density of fish in metric tons per cubic meter. The observer multiplies the cubic meters of fish in the net or bin by the density factor to convert cubic meters of fish into metric tons of fish. The estimates of the cubic meters of fish and the estimate of the density factor have inherent errors. NMFS has recently recommended a standard density factor for catches that are 95 percent or more pollock after conducting lengthy research. However, no similar research has been done for the mixed-species fisheries where determination of a density factor is complicated by the changing species composition of catch from haul to haul. The fishing industry likely could not perform the research necessary to specify conditions for volumetric estimates of catch weight in the mixed-species fisheries that would demonstrate that the catch weight on each vessel had been estimated within a specific range of error or accuracy standard.

The only practical option is to set such performance standards for particular types of equipment or approaches as are established in § 679.28 for scales and volumetrics, then specify which procedure must be followed and the associated equipment and operational requirements. In the case of the multispecies CDQ fisheries, NMFS has specified that scales are required and volumetrics will not be acceptable.

Comment 75: NMFS must have scale inspectors readily available in Seattle and Dutch Harbor to conduct scale inspections. The scale requirement will effectively require the State of Alaska to station inspectors in these ports.

Response: Refer to the response to comments in the final rule for the at-sea scales program (63 FR 5836, February 4, 1998) for more information on the scale inspection program. Although no State of Alaska inspector will be stationed in Seattle or Dutch Harbor, NMFS is requiring that scale inspections be conducted within 10 working days of the date on which the State of Alaska receives a written request from the vessel owner.

Comment 76: The proposed requirement to weigh CDQ catch on a scale does not address the uncertainty associated with species composition sampling to determine the estimated weight of each CDQ species in the catch.

Response: NMFS agrees that the uncertainty associated with species composition sampling is not changed by the requirement to weigh total catch. Observers will continue to sample the catch to determine the proportion of each species in each haul, set, or pot. However, some aspects of the multispecies CDQ regulations should improve these samples. For example, additional observers and the requirement that each haul or set be sampled will increase the amount of the catch that is sampled for species composition. The requirement that the scale used to weigh total catch be available for the observer to weigh large partial haul samples should provide for increased sample sizes, and the requirement for a motion-compensated platform scale should increase the accuracy of the sample weights.

Methods proposed by NMFS that would be based on observer sampling to estimate species composition of the catch would use sample sizes and procedures that NMFS believes an observer could reasonably accomplish in the time available to him or her under the fishing and processing conditions on a vessel. Observers would obtain the largest sample sizes they can, given time, equipment, available space, and catch composition. NMFS is not proposing to specify minimum sample sizes necessary to obtain catch weight estimates with specific statistical qualities. The staff resources and data necessary to develop sampling plans appropriate for specific target fisheries or specific vessels are not available at this time. In addition, NMFS expects that the minimum sample sizes required to estimate the weight of infrequently occurring species on a haul-by-haul basis with a high level of confidence would be too large to accommodate in the space available on many vessels and would require more than two observers to sort and weigh. If NMFS develops sampling plans or minimum sample sizes for the groundfish fisheries as a whole in the future, this information could be added to the CDQ fishery requirements at that time.

Comment 77: The scale may have to be installed in a location that prevents the observer from seeing the fish at all points between the live tank and the sampling station.

Response: NMFS is not requiring that the scale be located so that the observer can see fish at all points between the live tank and the sampling station.

Comment 78: NMFS should adopt a pre-approval process to review and approve or conditionally approve vessel modification plans for scales and observer sampling stations.

Response: NMFS will review plans for vessel modifications and discuss installation and technical requirements if requested to do so by a vessel owner. However, NMFS cannot approve the vessel owner's plans. Determination of whether equipment meets NMFS' requirements can only be determined once the equipment is installed and in use.

Comment 79: NMFS should clarify that reinspection of bins is not required for the 1998 pollock season for currently participating vessels.

Response: Bins that are currently certified based on regulations at § 679.32(e) with certification documents dated before July 6, 1998 do not have to meet two new requirements in this final rule. These requirements are (1) the requirement at § 679.28(e)(2)(i) that the numerals at the 10-cm increment marks be at least 4 cm high, and (2) the requirement at § 679.28(e)(3) for the information that must be submitted to NMFS in the bin certification documents. As stated in the proposed rule, because the bin certification requirements would be effective only for 1998 in the CDQ fisheries, vessel owners should not be required to modify numerals on previously certified bins. However, any bins certified for the first time or recertified after the effective date of this final rule must comply with this requirement.

Comment 80: The proposed requirement for an observer sampling station is a positive development for observers. Observers will be able to accomplish their duties much more efficiently, resulting in higher quality data and possibly larger sample sizes.

Response: NMFS agrees.

Comment 81: The proposed requirement that the observer sampling station on longline or pot catcher vessels or catcher/processors be located within 3 m of the location where fish are brought on board the vessel is unsafe. It will place observers dangerously close to the location where fish are landed. Three recommendations were made. The first recommendation is to specify the components and dimensions of the observer sampling station and allow the vessel to place it in a safe location as close as possible to where the fish are brought on board the vessel or to where the observer has first access to fish after they have been removed from the hook or pot. If there

must be an absolute distance requirement, it should be as close as possible but not more than 40 ft (12.19 m). The second recommendation is for NMFS to work with individual vessels and decide on the best placement of sampling stations on a vessel-by-vessel basis. The third recommendation is to allow the observer to determine the location of the observer sampling station, as currently is the practice.

Response: NMFS revised the requirement in § 679.28(d)(2)(ii) for the observer sampling station on vessels using nontrawl gear as follows: ''The observer sampling station must be located within 5 m of the location where fish are brought on board the vessel, unless any location within this distance is unsafe for the observer. The vessel owner must submit a written proposal to NMFS for an alternative location, including the reasons why a location within 5 m of where fish are brought onboard the vessel is unsafe.'' This written proposal must be included in the proposed CDP.

Comment 82: In § 679.28(d)(3) of the proposed rule, NMFS proposed that the observer sampling station be at least 1.8 m wide by 2.5 m long (approximately 6 ft x 8 ft), including the observer's sampling table. The proposed size is too large considering the limited space available on most trawl and longline vessels. Some otherwise highly desirable CDQ partners may be precluded from participation in the CDQ program as a result of this requirement.

Response: The specified amount of space is necessary for the observer sampling station. No change was made in the final rule in response to this comment.

Comment 83: The sampling station should also include a requirement for a checker bin or container where an observer can deposit and hold fish while sampling.

Response: Although it would be helpful for the vessel owner to provide such a container for observers, it is not an essential element of an observer sampling station. No change was made in response to this comment.

Comment 84: Deck sorting of catch on trawl catcher/processors is a technique used to reduce the mortality rate of some bycatch species, such as crab and halibut. The observer may participate in collecting and recording data regarding this bycatch as deck sorting is taking place. It would be dangerous for the observer sampling station to be located within 4 m of that location.

Response: The observer sampling station on a trawl catcher/processor is required to be within 4 m of where the observer samples unsorted catch, which generally occurs below deck as fish are being removed from the holding bins. Therefore, NMFS does not expect that any observer sampling station would be located on deck for catcher/processors using trawl gear. With respect to sorting prohibited species from the deck of trawl catcher/processors, current requirements at § 679.7(g) prohibit any person from interfering with or biasing the sampling procedure employed by an observer, including physical, mechanical, or other sorting or discarding of catch, including bycatch, before sampling. Therefore, if the observer is sampling catch below deck, the vessel crew is prohibited from sorting any catch from the deck.

Other Miscellaneous Comments

Comment 85: NMFS should allow vessels using trawl gear in the groundfish CDQ fisheries to start fishing on January 1, rather than requiring them to comply with the closure to fishing with trawl gear in the BSAI at § 679.23. The period between January 1 and 20 is an attractive time for many CDQ vessels to target pollock and rock sole to maximize the value of these fisheries. Maintaining this closure reduces the value of the CDQ fisheries.

Response: NMFS believes that this issue should be addressed before the Council with an opportunity for analysis and public comment. Therefore, the final rule will not be changed in response to this comment.

Comment 86: Retention and utilization requirements under the IR/IU program should not apply to the MS CDQ Program. These requirements are unnecessary and unreasonable, since the CDQ program, by its nature, ensures that the CDQ groups will rationally determine the optimal balance between socioeconomic needs and production cost, thus eliminating waste.

Response: NMFS disagrees. The CDQ fisheries will not be exempt from retention and utilization requirements that must be met by any vessel fishing for groundfish in the BSAI. The commenter is referred to the proposed and final rules implementing the IR/IU Program for a description of the purpose and need of the IR/IU Program (62 FR 34429, June 26, 1997, and 62 FR 63880, December 3, 1997).

Comment 87: The interim specifications process allows the harvest of only 25 percent of the CDQ and PSQ amounts until the specifications are finalized for the fishing year. This creates unnecessary problems that hamper the MS CDQ Program's effectiveness. NMFS should change the regulations to assign 50 percent of the proposed CDQs to the CDQ groups.

Response: The Council and NMFS are considering changes to the annual specifications process. Therefore, NMFS recommends that concerns about the impact of the specifications process on the CDQ fisheries be addressed through this ongoing Council process. No change to the final rule was made in response to this comment.

Changes From the Proposed Rule

In addition to the changes described in the Response to Comments section, NMFS has made the following changes from the proposed rule:

1. The definition of CDQ number was revised to specify that this number is to be used on all reports submitted by vessels and processors participating in the CDQ program in addition to being used by the CDQ representative.

2. The requirement for a CDQ permit was removed from the final rule because it was redundant; there are other requirements to demonstrate compliance with equipment requirements. Additionally, the fact that only certain vessels and processors were required to have a CDQ permit caused confusion. The objective of the CDQ permit was to provide a mechanism to verify that the scales and the observer sampling station required on vessels and sorting and weighing requirements for shoreside processors complied with requirements in § 679.28 before a vessel or processor was allowed to participate in the CDQ fisheries. The final rule replaces the CDQ permit with the requirement at § 679.28(d)(8) for an inspection of the observer sampling station by NMFS to verify that requirements for the observer sampling station are met. A prohibition against participating in the CDQ fisheries without a valid observer sampling station inspection report is added to § 679.7. The process for inspecting and approving at-sea scales already exists at § 679.28(b).

3. In the final rule, NMFS removed the sentence in § 679.32(a)(2) of the proposed rule, which stated, ''[t]he catch of * * * sablefish with fixed gear in the multispecies CDQ fisheries in 1998 will not accrue to the CDQs for these species.'' NMFS reviewed the Council's recommendations from its meeting in April 1996 and determined that the Council intended to exempt only groundfish and prohibited species bycatch in the fixed gear sablefish CDQ fisheries from accrual to the CDQs and PSQs for these species in 1998. This provision is made in § 679.32(g). However, the Council did not request that NMFS exempt sablefish catch in

other groundfish CDQ fisheries from accrual against the sablefish CDQ in 1998. Therefore, the final rule requires bycatch of sablefish in other CDQ fisheries in 1998 to accrue against a CDQ group's sablefish CDQ.

4. NMFS added prohibitions to § 679.7 against owners or operators of vessels or processors participating in the CDQ fisheries in violation of equipment requirements.

5. NMFS added a new paragraph (h) to § 679.22 to cross reference the MS CDQ Program's prohibited species catch closures that are listed in § 679.7(d).

6. NMFS revised § 679.28(d)(5) to be consistent with requirements for the observer sampling scale added to the final rule for the at-sea scale program (63 FR 5836, February 4, 1998). The observer sampling scale must be approved by NMFS under paragraph (b) of this section, must be tested daily as required under paragraph (b)(3) of this section, and must meet the maximum permissible error requirement specified in paragraph (b)(3)(ii)(A) of this section.

7. NMFS revised § 679.30(a)(5)(iii) to add the provision that a substantial amendment must be used to add a vessel to an approved CDP if the CDQ group submits a proposed alternative to NMFS's standard methods of determining CDQ and PSQ catch for that vessel under § 679.30(a)(5)(ii). In this case, a technical amendment would not provide sufficient time for NMFS' review of the alternative proposal.

8. The final rule makes three technical corrections to the proposed rule. First, the allocation of PSC to the MS CDQ program is moved from § 679.21(e)(3) to § 679.21(e)(1)(i) and (e)(2)(i) in order to solve cross referencing problems that were created when the instruction was placed in paragraph (e)(3). Second, cross references to paragraphs of §§ 679.2, 679.21, and 679.31 that are changed by this rule are updated. Third, the stricture that PSQ is not apportioned by gear or fishery is made explicit in § 679.21(e)(1)(i) and (e)(2)(ii).

9. The final rule amends 15 CFR part 902 to add the OMB control number for the at-sea scales program to the list of approved NOAA information collection requirements under the Paperwork Reduction Act.

Classification

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

At the proposed rule stage, 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 rule would not have a significant economic impact on a substantial number of small entities. NMFS received one comment on that certification (see Comment 71 and the response to it). For the following reasons, this comment did not lead NMFS to change its certification and as a result, a regulatory flexibility analysis was not prepared.

The MS CDQ Program is comprised of three different CDQ fisheries: (1) The multispecies groundfish CDQ fisheries, which include the current pollock and fixed gear sablefish CDQ fisheries, as well as the additional groundfish and prohibited species added to the CDQ program in 1998; (2) the fixed gear halibut CDQ fisheries; and (3) the crab CDQ fisheries. Information about the impact of the allocation of the CDQ reserves from the TACs available to non-CDQ fisheries was discussed in the final rule that implemented the multispecies groundfish and crab CDQ reserves (63 FR 8356, February 19, 1998). The final rule being published today includes the administrative requirements for all of the CDQ fisheries and the reporting and catch monitoring requirements for the groundfish and halibut CDQ fisheries. Catch monitoring for the crab CDQ fisheries is the responsibility of the State of Alaska and NMFS does not promulgate regulations governing catch monitoring for the crab CDQ fisheries. In addition, this final rule makes no significant changes to the catch monitoring requirements for the halibut CDQ fisheries. Therefore, the primary economic impact of this final rule on participants in the CDQ fisheries is the impact of the equipment and observer coverage requirements for vessels and processors participating in the MS groundfish CDQ fisheries. Therefore, the remainder of this discussion focuses on participants in that fishery only (MS groundfish CDQ).

NMFS prepared a Supplemental Regulatory Impact Review to analyze the impact of the equipment and observer coverage requirements for vessels and processors participating in the MS groundfish CDQ fisheries. This analysis is available from NMFS (see **ADDRESSES**).

The universe of entities that could participate in the MS groundfish CDQ program is comprised of all 471 current participants in the BSAI groundfish fisheries, including the CDQ groups, vessels, and processors. The individual participants are divided into the following categories: CDQ groups, catcher vessels using trawl gear on vessels less than 60 ft (18.29 m) LOA, catcher vessels using fixed gear (longline and pot gear) on vessels less than 60 ft (18.29 m) LOA, catcher vessels using trawl gear on vessels 60′ and over LOA, catcher vessels using fixed gear on vessels 60′ and over LOA, catcher/processors of any length using trawl gear, catcher/processors of any length using fixed gear, motherships, floating processors (processor vessels operating within 3 miles of the coast of Alaska), and shoreside processing plants. Of these 471 entities, 403 (86 percent) are considered small entities and, therefore, make up the ''universe of small entities.''

Of the 471 affected entities, NMFS estimates that 92 will participate in the MS groundfish CDQ fisheries based on current participation in the pollock and fixed gear sablefish CDQ fisheries and on the CDQ groups' projections of the number of additional participants that will enter the CDQ fisheries once the MS CDQ Program is implemented. The 92 participants are comprised of 6 CDQ groups; 28 catcher vessels 60 ft (18.29 m) LOA and over using trawl gear; 5 catcher vessels 60 ft (18.29 m) LOA and over using longline gear; 37 catcher/processors using trawl gear; 10 catcher/processor using longline gear; 2 motherships; and 4 shoreside processing plants.

Of these 92 expected participants in the MS groundfish CDQ fisheries, 57 are considered small entities by NMFS. The small entities include 6 CDQ groups; 28 catcher vessels 60 ft (18.29 m) LOA and over using trawl gear; 5 catcher vessels 60 ft (18.29 m) LOA and over using longline gear; 4 of the 37 catcher/processors using trawl gear; 10 catcher/processor using longline gear; 4 shoreside processing plants.

NMFS further determined that 33 of the 57 small entities expected to participate in the MS groundfish CDQ fisheries may be significantly impacted by the observer coverage and equipment requirements for the following reasons.

Six CDQ groups: the costs of observer coverage and equipment requirements are directly paid by the vessels and processors participating in the CDQ fisheries. However, these costs may be passed on to the CDQ groups in the form of lower royalties. Therefore, the CDQ groups may indirectly bear the costs of these requirements. Because NMFS does not know whether these costs will be passed on or to what degree, NMFS determines that the CDQ groups may be significantly impacted by the observer coverage and equipment requirements because these costs could reduce annual gross revenues to the CDQ groups by more than 5 percent.

Four catcher vessels 60 ft (18.29 m) and over using trawl gear: 24 of the 28 catcher vessels that are expected to

participate in the MS groundfish CDQ fisheries will not be significantly impacted by the observer coverage requirements because they already are required to have this level of observer coverage under current regulations for the pollock CDQ fisheries. However, the 4 additional catcher vessels that NMFS expects may enter the MS groundfish CDQ fisheries in the future could be significantly impacted by the observer coverage requirements because these costs could reduce annual gross revenues by more than 5 percent, or could result in compliance costs as a percent of sales for small entities that are at least 10 percent higher than compliance costs as a percent of sales for large entities.

Five catcher vessels 60 ft (18.29 m) and over using longline gear: NMFS determines that these small entities may be significantly impacted by the observer coverage requirements because these costs could reduce annual gross revenues by more than 5 percent, or could result in compliance costs as a percent of sales for small entities that are at least 10 percent higher than compliance costs as a percent of sales for large entities.

Four of the 37 catcher/processors using trawl gear: NMFS determines that these small entities may be significantly impacted by the observer coverage and equipment requirements because these costs could reduce annual gross revenues by more than 5 percent, could result in compliance costs as a percent of sales for small entities that are at least 10 percent higher than compliance costs as a percent of sales for large entities, or could result in capital costs of compliance that represent a significant portion of capital available to small entities, considering internal cash flow and external financing capabilities.

Ten catcher/processor using longline gear: NMFS determines that these small entities may be significantly impacted by the observer coverage and equipment requirements because these costs could reduce annual gross revenues by more than 5 percent, could result in compliance costs as a percent of sales for small entities that are at least 10 percent higher than compliance costs as a percent of sales for large entities, or could result in capital costs of compliance that represent a significant portion of capital available to small entities, considering internal cash flow and external financing capabilities.

Four shoreside processing plants: NMFS determines that these small entities may be significantly impacted by the observer coverage requirements because these costs could reduce annual gross revenues by more than 5 percent, or could result in compliance costs as a percent of sales for small entities that are at least 10 percent higher than compliance costs as a percent of sales for large entities.

NMFS has determined that, while the MS CDQ monitoring regulations may have a significant impact on approximately 33 of the expected participants in the MS groundfish CDQ fisheries, these regulations will not impact a ''substantial number'' of small entities in the universe of 403 small entities. A substantial number is defined by NMFS as 20 percent or more of the universe of small entities. The participants that could experience significant economic impacts constitute 8.2 percent of the total universe of affected small entities (403).

In addition, participation in the CDQ fisheries is voluntary. It is anticipated that CDQ groups, vessels, and processors would weigh the cost of compliance with these regulations against the potential profits associated with participating in the CDQ program and would enter the CDQ fisheries only if they expected to realize a net economic benefit.

Finally, some of the catch monitoring costs will be deductible under the future CDQ fee collection program. The Magnuson-Stevens Act, section 305(i)(3) states that ''The Secretary shall deduct from any fees collected from a community development quota program under section 304(d)(2) the costs incurred by participants in the program for observer and reporting requirements which are in addition to observer and reporting requirements of other participants in the fishery in which the allocation to such program has been made.''

This rule contains collection-of-information requirements subject to the Paperwork Reduction Act. A request will be submitted to the Office of Management and Budget (OMB) for approval of the requirements for the CDQ delivery report (§ 679.5(n)(1)), prior notice to the observer on catcher/processors and motherships that CDQ catch will be brought onboard the vessel (§ 679.32(c)(4)(i)), additional information in the CDQ catch report (§ 679.5(n)(2)) and additional information in the CDP (§ 679.30(a)(5)(i)(A)(*2*)). The public reporting burden for these proposed requirements is estimated to be 1 hour per response for the CDQ delivery report, 2 minutes per response for prior notice to the observers, ½ hour per response for the CDQ catch report and 20 hours per response for the additional information required in the CDP.

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. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding these burden estimates or any other aspect of the data requirements, including suggestions for reducing the burden, to NMFS (see **ADDRESSES**) and to the Office of Information and Regulatory Affairs, OMB, Washington, DC 20503, Attention: NOAA Desk Officer.

The other collections of information in this rule have been approved by OMB, OMB control number 0648–0269. The public reporting burden for this collection of information is estimated to average 500 hours per response for the CDPs, 40 hours per response for the annual report, 20 hours per response for the annual budget reports, 8 hours per response for the annual budget reconciliation reports, 8 hours per response for substantial amendments, 4 hours per response for technical amendments, 2 hours per response for CDQ catch reports, 2 hours per response for the request for an inspection of the observer sampling station (information required under the CDQ permit in the proposed rule), 2 minutes per response for prior notices to the observer that CDQ catch will be offloaded at the shoreside processing plant, and 10 minutes per response for printing and retaining scale printouts by shoreside processors. The public reporting burden for requirements applicable in 1998 is estimated to average only 8 hours per response to complete bin certification documents, 0.5 hour per response for changes to the list of CDQ halibut/sablefish cardholders, and 1 hour per response for changes to CDP lists of vessels for halibut/sablefish.

List of Subjects

15 CFR Part 902

Reporting and recordkeeping requirements.

50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: May 27, 1998.

David L. Evans,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For reasons set out in the preamble, 15 CFR part 902 and 50 CFR part 679 are amended as follows:

15 CFR Chapter IX

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

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

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

§ 902.1 [Amended]

2. In § 902.1, paragraph (b), in the table, under 50 CFR, the following changes are made:

a. To the entry ''679.5'', the number ''–0269'' is added to the list of numbers in the right column.

b. The entry ''679.28'' is added in numerical order in the left column and the corresponding entry ''–0330'' is added in the right column.

c. To the entry ''679.32'', the number ''–0272'' is added to the list of numbers in the right column.

d. The entries for ''679.33'' and ''679.34'' are removed.

50 CFR Chapter VI

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

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

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*

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

§ 679.1 Purpose and scope.

* * * * *

(e) *Western Alaska CDQ Program*. The goals and purpose of the CDQ program are to allocate CDQ to eligible Western Alaska communities to provide the means for starting or supporting commercial fisheries business activities that will result in an ongoing, regionally based, fisheries-related economy.

* * * * *

5. In § 679.2, the definition for ''Governor'' is removed; the definitions for ''Community Development Plan (CDP)'', ''Community Development Quota (CDQ)'', ''Person'', ''Prohibited species quota'', ''Qualified applicant'', and ''Resident fisherman'' are revised; and definitions for ''CDQ allocation'', ''CDQ group'', ''CDQ number'', ''CDQ project'', ''CDQ representative'', ''CDQ species'', ''Eligible community'', ''Fixed gear sablefish and halibut CDQ fishing'', ''Groundfish CDQ fishing'', ''Managing organization'', ''Pollock CDQ fishing'', ''PSQ allocation'', and ''PSQ species'' are added in alphabetical order to read as follows:

§ 679.2 Definitions.

* * * * *

CDQ *allocation* means a percentage of a CDQ reserve under § 679.31 that is assigned to a CDQ group when NMFS approves a proposed CDP.

CDQ group means a qualified applicant with an approved CDP.

CDQ number means a number assigned to a CDQ group by NMFS that must be used on all reports submitted by the CDQ group or by vessels and processors catching CDQ or PSQ under an approved CDP.

CDQ project means any program that is funded by a CDQ group's assets for the economic or social development of a community or group of communities that are participating in a CDQ group, including, but not limited to, infrastructure development, CDQ investments, employment and training programs, and CDP administration.

CDQ representative means the individual who is the official contact for NMFS regarding all matters relating to a CDQ group's activities.

CDQ species means any species or species group that has been assigned to a CDQ reserve under § 679.31.

* * * * *

Community Development Plan (CDP) means a business plan for the economic and social development of a specific Western Alaska community or group of communities under the CDQ program at § 679.30.

Community Development Quota (CDQ) means the amount of a CDQ species established under § 679.31, in metric tons, that is allocated to the CDQ program.

* * * * *

Eligible community means a community that is listed in Table 7 to this part or that meets all of the following requirements:

(1) The community is located within 50 nm from the baseline from which the breadth of the territorial sea is measured along the Bering Sea coast from the Bering Strait to the most western of the Aleutian Islands, or on an island within the Bering Sea. A community is not eligible if it is located on the GOA coast of the North Pacific Ocean, even if it is within 50 nm of the baseline of the Bering Sea.

(2) That is certified by the Secretary of the Interior pursuant to the Native Claims Settlement Act (Pub. L. 92–203) to be a native village.

(3) Whose residents conduct more than half of their current commercial or subsistence fishing effort in the waters of the BSAI.

(4) That has not previously developed harvesting or processing capability sufficient to support substantial groundfish fisheries participation in the BSAI, unless the community can show that benefits from an approved CDP would be the only way to realize a return from previous investments. The community of Unalaska is excluded under this provision.

* * * * *

Fixed gear sablefish and halibut CDQ fishing (applicable through December 31, 1998) means fishing with fixed gear by an eligible vessel listed on an approved CDP that results in the catch of any halibut CDQ or the catch of any sablefish CDQ that accrues against the fixed gear sablefish CDQ reserve.

* * * * *

Groundfish CDQ fishing (applicable through December 31, 1998) means fishing by an eligible vessel listed on an approved CDP that results in the catch of any CDQ or PSQ species other than pollock CDQ, halibut CDQ, and fixed gear sablefish CDQ.

* * * * *

Managing organization means the organization responsible for managing all or part of a CDP.

* * * * *

Person means:

(1) For purposes of IFQ species and the CDQ program, any individual who is a citizen of the United States or any corporation, partnership, association, or other entity (or its successor-in-interest), regardless of whether organized or existing under the laws of any state, who is a U.S. citizen.

(2) For purposes of High Seas Salmon Fishery permits issued under § 679.4(h), the term ''person'' excludes any nonhuman entity.

(3) (Applicable through December 31, 1998). For purposes of the moratorium, any individual who is a citizen of the United States or any U.S. corporation, partnership, association, or other entity (or its successor-in-interest), regardless of whether organized or existing under the laws of any state.

* * * * *

Pollock CDQ fishing (applicable through December 31, 1998) means fishing with pelagic trawl gear by an eligible vessel listed on an approved CDP that results in the catch of pollock that accrues against a CDQ group's allocation of pollock CDQ.

* * * * *

Prohibited species quota (PSQ) means the amount of a prohibited species catch limit established under § 679.21(e) (1) and (2) that is allocated to the groundfish CDQ program under § 679.21 (e)(1)(i) and (e)(2)(i).

* * * * *

PSQ allocation means a percentage of a PSQ reserve specified pursuant to § 679.31(g) that is assigned to a CDQ group when NMFS approves a proposed CDP.

PSQ species means any species that has been assigned to a PSQ reserve as specified at § 679.31(g) for purposes of the CDQ program.

Qualified applicant means, for the purposes of the CDQ program:

(1) A local fishermen's organization that:

(i) Represents an eligible community or group of eligible communities;

(ii) Is incorporated under the laws of the State of Alaska or under Federal law; and

(iii) Has a board of directors composed of at least 75 percent resident fishermen of the community (or group of communities); or

(2) A local economic development organization that:

(i) Represents an eligible community or group of communities;

(ii) Is incorporated under the laws of the State of Alaska or under Federal law specifically for the purpose of designing and implementing a CDP; and

(iii) Has a board of directors composed of at least 75 percent resident fishermen of the community (or group of communities).

* * * * *

Resident fisherman means an individual with documented commercial or subsistence fishing activity who maintains a mailing address and permanent domicile in an eligible community and is eligible to receive an Alaska Permanent Fund dividend at that address.

* * * * *

6. In § 679.5, paragraphs (h)(2)(i)(C) and (h)(2)(ii)(F) are revised, and a new paragraph (n) is added to read as follows:

§ 679.5 Recordkeeping and reporting.

* * * * *

(h) * * *

(2) * * *

(i) * * *

(C) *Fishing for groundfish CDQ species.* The operator of a catcher/processor or mothership must submit by fax a check-in report to the Regional Administrator prior to fishing for any CDQ species. A separate report must be submitted for each CDQ number.

(ii) * * *

(F) *Fishing for groundfish CDQ species.* The operator of a catcher/processor or mothership must submit by fax a check-out report to the Regional Administrator within 24 hours after fishing for any CDQ species has ceased. A separate report must be submitted for each CDQ number.

* * * * *

(n) *Groundfish CDQ fisheries*—(1) *CDQ delivery report.* The manager of each shoreside processor and the manager or operator of each buying station taking deliveries of CDQ or PSQ species from catcher vessels must submit the following information on the CDQ delivery report to NMFS within 24 hours of each delivery of groundfish CDQ species:

(i) CDQ number.

(ii) Name of the vessel delivering CDQ, writing ''unnamed'' if the vessel has no name.

(iii) ADF&G number of the vessel delivering CDQ.

(iv) Federal fisheries permit number of the vessel delivering CDQ, if applicable.

(v) Name of the processor taking delivery of the CDQ.

(vi) Federal processor permit number of the processor taking delivery of the CDQ.

(vii) Gear used to catch CDQ.

(viii) The CDQ delivery number, which is a unique, sequential number assigned by the catcher vessel operator and recorded in the DCPL.

(ix) Reporting area where CDQ catch was made.

(x) For catcher vessels using trawl gear, whether the catch was from the CVOA or from the COBLZ.

(xi) Date the CDQ catch was delivered to the processor.

(xii) Species codes using codes in Table 2 to this part.

(xiii) Product codes using the product codes listed in Table 1 to this part for groundfish and at § 679.42(c)(2)(iii) for halibut, using product code 98 to designate at-sea discards reported by the operator of an unobserved vessel.

(xiv) Product weight to the nearest 0.001 mt for groundfish CDQ and halibut CDQ or PSQ, and the total number of salmon PSQ and crab PSQ delivered to the processor. The weight of halibut CDQ, halibut PSQ, halibut IFQ, and sablefish IFQ must be reported separately on the CDQ delivery report. In addition, PSQ delivered to the processor must be reported separately from PSQ discarded at sea by unobserved catcher vessels. For catcher vessels with a CDQ observer, do not report estimates of at-sea discards on the CDQ delivery report.

(xv) The printed name, signature, and date of signature for the vessel operator and the manager of the shoreside processing plant or operator or the buying station.

(2) *CDQ catch report.* The CDQ catch report is required for all catch made by vessels groundfish CDQ fishing as defined at § 679.2. The CDQ representative must submit the following information to NMFS within 7 days of the date CDQ catch was delivered by a catcher vessel to a shoreside processor, buying station, or mothership, or within 7 days of the date gear used to catch CDQ was retrieved for catcher/processors.

(i) *For all CDQ catch reports.* (A) CDQ number.

(B) Name of vessel used to catch CDQ, writing ''unnamed'' if the vessel has no name.

(C) Federal fisheries permit number of the vessel used to catch CDQ.

(D) ADF&G number of the vessel used to catch CDQ.

(E) Gear used to catch CDQ.

(F) Reporting area where CDQ catch was made.

(G) For vessels using trawl gear, whether the catch was from the CVOA or COBLZ.

(H) Species codes using codes in Table 2 to this part.

(I) The CDQ representative's printed name, signature, and date of signature.

(ii) *For catcher vessels retaining all groundfish CDQ and delivering it to a shoreside processing plant (Option 1 in the CDP).* (A) Name of the processor taking delivery of the CDQ.

(B) Federal processor permit number of the processor taking delivery of the CDQ.

(C) Date CDQ catch was delivered.

(D) The CDQ delivery number.

(E) Product codes using the product codes listed in Table 1 to this part for groundfish and at § 679.42(c)(2)(iii) for halibut, using product code 98 to designate at-sea discards reported by the operator of an unobserved vessel.

(F) Product weight to the nearest 0.001 mt for groundfish CDQ and halibut CDQ or PSQ, and the total number of salmon PSQ and crab PSQ. The weight of halibut and sablefish CDQ and IFQ, and the weight of halibut PSQ must be reported separately. PSQ reports must include all PSQ delivered to the processor and all PSQ reported as discarded at sea by the vessel operator for unobserved vessels and by the CDQ observer for vessels required to carry a CDQ observer. The CDQ catch report must identify whether sablefish CDQ accrues against the fixed gear sablefish CDQ reserve or the sablefish CDQ reserve as defined at § 679.20(b)(1)(iii).

(iii) *For catcher/processors; catcher vessels delivering to motherships; and catcher vessels using nontrawl gear discarding groundfish CDQ at sea and delivering to shoreside processing plants (Option 2 in the CDP).* (A) Name, Federal fisheries permit number, and ADF&G number of the mothership, if applicable.

(B) Name and Federal processor permit of the shoreside processing plant, if applicable.

(C) The CDQ observer's haul or set number.

(D) Date gear retrieved by the catcher/processor, mothership, or catcher vessel as determined by the CDQ observer.

(E) The total weight to the nearest 0.001 mt for groundfish CDQ and halibut PSQ, the product code and product weight for halibut CDQ, and the total number of salmon PSQ and crab PSQ. The weight of halibut CDQ and halibut PSQ must be reported separately and the CDQ catch report must identify whether sablefish CDQ accrues against the fixed gear sablefish CDQ reserve or the sablefish CDQ reserve as defined at § 679.20(b)(1)(iii).

(3) *Halibut CDQ.* All halibut CDQ harvested by vessels while groundfish CDQ fishing as defined at § 679.2 must be reported on the CDQ delivery report and on the CDQ catch report.

7. In § 679.7, paragraph (d) is revised to read as follows:

§ 679.7 Prohibitions.

* * * * *

(d) *CDQ.* (1) Participate in a Western Alaska CDQ program in violation of this part.

(2) Fail to submit, submit inaccurate information on, or intentionally submit false information on any report, application, or statement required under this part.

(3) Participate as a community in more than one CDP, unless the second CDP is for vessels fishing halibut CDQ only.

(4) Harvest groundfish CDQ or halibut CDQ or PSQ on behalf of a CDQ group with a vessel that is not listed as an eligible vessel on an approved CDP for that CDQ group.

(5) For a CDQ group, exceed a CDQ, halibut PSQ, or crab PSQ.

(6) For the operator of an eligible vessel listed on an approved CDP, use trawl gear to harvest groundfish CDQ in Zone 1 after the CDQ group's red king crab PSQ or *C. bairdi* Tanner crab PSQ in Zone 1 is attained.

(7) For the operator of an eligible vessel listed on an approved CDP, use trawl gear to harvest groundfish CDQ in Zone 2 after the CDQ group's PSQ for *C. bairdi* Tanner crab in Zone 2 is attained.

(8) For the operator of an eligible vessel listed on an approved CDP, use trawl gear to harvest groundfish CDQ in the *C. opilio* Bycatch Limitation Zone after the CDQ group's PSQ for *C. opilio* Tanner crab is attained.

(9) For the operator of an eligible vessel listed on an approved CDP, use trawl gear to harvest groundfish CDQ in the Chinook Salmon Savings Area between January 1 and April 15 after the CDQ group's chinook salmon PSQ is attained.

(10) For the operator of an eligible vessel listed on an approved CDP, use trawl gear to harvest groundfish CDQ in the Chum Salmon Savings Area between September 1 and October 14 after the CDQ group's non-chinook salmon PSQ is attained.

(11) For the operator of a catcher vessel using trawl gear or any vessel less than 60 ft (18.29 m) LOA, discard any groundfish CDQ species or salmon PSQ before it is delivered to an eligible processor listed on an approved CDP.

(12) For the operator of a vessel using trawl gear, release CDQ catch from the codend before it is brought on board the vessel and weighed on a scale approved by NMFS under § 679.28(b) or delivered to a processor. This includes, but is not limited to, ''codend dumping'' and ''codend bleeding.''

(13) For the operator of a catcher vessel, catch, retain on board, or deliver groundfish CDQ species together with moratorium groundfish species.

(14) For the operator of a catcher/processor, catch groundfish CDQ species together with moratorium groundfish species in the same haul, set, or pot.

(15) For the operator of a catcher/processor or a catcher vessel required to carry a CDQ observer, combine catch from two or more CDQ groups or from CDQ and IFQ in the same haul or set.

(16) Use any groundfish CDQ species as a basis species for calculating retainable bycatch amounts under § 679.20.

(17) For the operator of a catcher/processor using trawl gear or a mothership, harvest or take deliveries of CDQ or PSQ species without a valid scale inspection report signed by an authorized scale inspector under § 679.28(b)(2) on board the vessel.

(18) For the operator of a vessel required to have an observer sampling station described at § 679.28(d), harvest or take deliveries of CDQ or PSQ species without a valid observer sampling station inspection report issued by NMFS under § 679.28(d)(8) on board the vessel.

(19) For the operator of a catcher/processor using trawl gear or a mothership, sort, process, or discard CDQ or PSQ species before the total catch is weighed on a scale that meets the requirements of § 679.28(b).

(20) For the operator of a vessel required to have a scale to weigh total catch or an observer sampling scale, harvest or take deliveries of CDQ or PSQ species if any scale fails to meet the daily test requirements described at § 679.28(b)(3).

(21) For the manager of a shoreside processor or the manager or operator of a buying station that is required elsewhere in this part to weigh catch on a scale approved by the State of Alaska under § 679.28(b), fail to weigh catch on a scale that meets the requirements of § 679.28(b).

(22) For the operator of a catcher/processor or mothership that is required elsewhere in this part to provide certified bins for volumetric estimates that meet the requirements of § 679.28(e), fail to provide bins that meet the requirements of § 679.28(e).

(23) For a CDQ representative, use methods other than those approved in the CDP to determine the catch of CDQ and PSQ reported to NMFS on the CDQ catch report.

(24) For the operator of a vessel using trawl gear, harvest pollock CDQ in 1998 with trawl gear other than pelagic trawl gear.

(25) For a CDQ group, report catch of sablefish CDQ for accrual against the fixed gear sablefish CDQ reserve if that sablefish CDQ was caught with fishing gear other than fixed gear.

(26) For the operator of a vessel, harvest halibut CDQ with other than fixed gear.

(27) For a CDQ group, fail to ensure that all vessels and processors listed as eligible on the CDQ group's approved CDP comply with all regulations in this part while fishing for CDQ.

(28) Fail to comply with the requirements of a CDP.

* * * * *

8. Section 679.21 is amended by making the following changes:

a. Paragraphs (b)(2)(ii) and (b)(3) are revised;

b. The introductory text of paragraphs (e)(1)(i), (e)(1)(ii), (e)(1)(iii), and paragraphs (e)(1)(iv) through (e)(1)(vii) are redesignated as the introductory text of paragraphs (e)(1)(ii), (e)(1)(iii), (e)(1)(iv) and paragraphs (e)(1)(v) through (viii), respectively;

c. New paragraph (e)(1)(i) introductory text is added;

d. Newly redesignated paragraph (e)(1)(viii) and paragraph (e)(2) are revised;

e. Paragraph (e)(3) is removed;

f. Paragraphs (e)(4) through (e)(9) are redesignated as paragraphs (e)(3) through (e)(8) respectively; and

g. Newly redesignated paragraphs (e)(3)(i) and (e)(4)(i) are revised. The newly added and revised text reads as follows:

§ 679.21 Prohibited species bycatch management.

* * * * *

(b) * * *

(2) * * *

(ii) After allowing for sampling by an observer, if an observer is aboard, sort its catch immediately after retrieval of the gear and, except as provided below, return all prohibited species or parts thereof to the sea immediately, with a minimum of injury, regardless of its condition. The following exceptions are made:

(A) Salmon prohibited species catch in the BSAI groundfish fisheries under paragraph (c) of this section and § 679.26; and

(B) Salmon PSQ caught by catcher vessels using trawl gear in the CDQ fisheries under subpart C of this part.

(3) *Rebuttable presumption.* Except as provided under paragraph (c) of this section, § 679.26, or for salmon PSQ retained by catcher vessels using trawl gear in the CDQ fisheries, there will be a rebuttable presumption that any prohibited species retained on board a fishing vessel regulated under this part was caught and retained in violation of this section.

* * * * *

(e) * * *

(1) * * *

(i) *PSQ reserve.* 7.5 percent of each PSC limit set forth in paragraphs (e)(1)(ii) through (v), (e)(1)(vii), and (e)(1)(viii) of this section is allocated to the groundfish CDQ program as PSQ reserve. The PSQ reserve is not apportioned by gear or fishery.

* * * * *

(viii) *Non-chinook salmon.* The PSC limit of non-chinook salmon caught by vessels using trawl gear during August 15 through October 14 in the CVOA is 42,000 fish.

(2) *Nontrawl gear, halibut.* (i) The PSC limit of halibut caught while conducting any nontrawl fishery for groundfish in the BSAI during any fishing year is the amount of halibut equivalent to 900 mt of halibut mortality.

(ii) 7.5 percent of the nontrawl gear halibut PSC limit set forth in paragraph (e)(2)(ii) of this section is allocated to the groundfish CDQ program as PSQ reserve. The PSQ reserve is not apportioned by gear or fishery.

(3) * * *

(i) *General.* NMFS, after consultation with the Council and after subtraction of PSQ reserve, will apportion each PSC limit set forth in paragraphs (e)(1)(i) through (vii) of this section into bycatch allowances for fishery categories defined in paragraph (e)(3)(iv) of this section, based on each category's proportional share of the anticipated incidental catch during a fishing year of prohibited species for which a PSC limit is specified and the need to optimize the amount of total groundfish harvested under established PSC limits.

* * * * *

(4) * * *

(i) *General.* NMFS, after consultation with the Council and after subtraction of PSQ reserve, may apportion the halibut PSC limit for nontrawl gear set forth under paragraph (e)(2)(i) of this section into bycatch allowances for nontrawl fishery categories defined under paragraph (e)(4)(ii) of this section based on each category's proportional share of the anticipated bycatch mortality of halibut during a fishing year and the need to optimize the amount of total groundfish harvested under the nontrawl halibut PSC limit. The sum of all bycatch allowances of any prohibited species will equal its PSC limit.

* * * * *

§ 679.21 [Amended]

9. In addition to the amendments set forth above, § 679.21 is amended by making the following changes:

a. In newly redesignated paragraph (e)(1)(ii) introductory text, the reference to paragraph (e)(1)(i)(A) is removed and a reference to (e)(1)(iii)(A) is added in its place.

b. In newly redesignated paragraph (e)(1)(iii) introductory text, the reference to (e)(1)(ii)(A) is removed and a reference to (e)(1)(iii)(A) is added in its place.

c. In newly redesignated paragraph (e)(3)(i), the references to (e)(1)(i) through (vii) are removed and references to (e)(1)(ii) through (viii) are added in their place.

d. In newly redesignated paragraph (e)(3)(ii)(B)(*2*), the reference to (e)(1)(i) is removed and a reference to (e)(1)(ii) is added in its place.

10. In § 679.22, a new paragraph (h) is added to read as follows:

§ 679.22 Closures.

* * * * *

(h) *CDQ Fisheries.* See § 679.7(d)(6) through (10) for time and area closures that apply to the CDQ fisheries once salmon and crab PSQ amounts have been reached.

11. In § 679.23, the headings of paragraphs (e)(3)(i) and (ii) are revised, and paragraph (e)(3)(iv) is added to read as follows:

§ 679.23 Seasons.

* * * * *

(e) * * *

(3) * * *

(i) *Halibut CDQ.* * * *

(ii) *Sablefish CDQ.* * * *

* * * * *

(iv) *Groundfish CDQ.* Fishing for groundfish CDQ species, other than fixed gear sablefish CDQ under subpart C of this part, is authorized from 0001 hours, A.l.t., January 1, through the end of each fishing year, except as provided in paragraph (c) of this section, and in 1998 when fishing for groundfish CDQ species other than fixed gear sablefish is authorized from 1200 hours, A.l.t., October 1, through the end of the fishing year.

* * * * *

12. In § 679.28, paragraph (a) is revised, and new paragraphs (c) through (e) are added to read as follows:

§ 679.28 Equipment and operational requirements for catch weight measurement.

(a) *Applicability.* This section contains the requirements for scales, observer sampling stations, and bins for volumetric estimates approved by NMFS and requirements for scales approved by the State of Alaska. This section does not require any vessel or processor to provide this equipment. Such requirements appear elsewhere in this part.

* * * * *

(c) *Scales approved by the State of Alaska.* Scales used to weigh groundfish catch that are also required to be approved by the State of Alaska under Alaska Statutes 45.75 must meet the following requirements:

(1) *Verification of approval.* The scale must display a valid State of Alaska sticker indicating that the scale was inspected and approved within the previous 12 months.

(2) *Visibility.* The scale and scale display must be visible simultaneously to the observer. Observers, NMFS personnel, or an authorized officer must be allowed to observe the weighing of fish on the scale and be able to read the scale display at all times.

(3) *Printed scale weights.* Printouts of the scale weight of each haul, set, or delivery must be made available to observers, NMFS personnel, or an authorized officer at the time printouts are generated and thereafter upon request for the duration of the fishing year. Printouts must be retained by the operator or manager as specified in § 679.5(a)(15).

(d) *Observer sampling station*—(1) *Accessibility.* All of the equipment required for an observer sampling station must be available to the observer at all times while a sampling station is required and the observer is aboard the vessel, except that the observer sampling scale may be used by vessel personnel to conduct material tests of the scale used to weigh total catch under paragraph (b)(3) of this section, as long as the use of the observer's sampling scale by others does not interfere with the observer's sampling duties.

(2) *Location*—(i) *Motherships and catcher/processors or catcher vessels using trawl gear.* The observer sampling station must be located within 4 m of the location from which the observer samples unsorted catch. Clear, unobstructed passage must be provided between the observer sampling station and the location where the observer samples unsorted catch.

(ii) *Vessels using nontrawl gear.* The observer sampling station must be located within 5 m of the location where fish are brought on board the vessel, unless any location within this distance is unsafe for the observer. Clear, unobstructed passage must be provided between the observer sampling station and the location where the observer samples unsorted catch. NMFS will approve an alternative location if the vessel owner submits a written proposal describing the alternative location, the reasons why a location within 5 m of where fish are brought on board the vessel is unsafe, and if the proposed observer sampling station meets all other applicable requirements of this section.

(3) *Minimum work space.* The observer must have a working area at least 1.8 m wide by 2.5 m long, including the observer's sampling table, for sampling and storage of fish to be sampled. The observer must be able to stand upright in the area in front of the table and scale.

(4) *Table.* The observer sampling station must include a table at least 0.6 m deep, 1.2 m wide and 0.9 m high and no more than 1.1 m high. The entire surface area of the table must be available for use by the observer. Any area used for the observer sampling scale is in addition to the minimum space requirements for the table. The observer's sampling table must be secured to the floor or wall.

(5) *Observer sampling scale.* The observer sampling station must include an electronic motion-compensated platform scale with a capacity of at least 50 kg located within 1 m of the observer's sampling table. The scale must be approved by NMFS under paragraph (b) of this section and must meet the maximum permissible error requirement specified in paragraph (b)(3)(ii)(A) of this section when tested by the observer.

(6) *Other requirements.* The sampling station must include floor grating, adequate lighting, and a hose that supplies fresh or sea water to the observer.

(7) *Requirements for sampling catch.* On motherships and catcher/processors using trawl gear, the conveyor belt conveying unsorted catch must have a removable board to allow fish to be diverted from the belt directly into the observer's sampling baskets. The diverter board must be located after the scale used to weigh total catch so that the observer can use this scale to weigh large samples.

(8) *Inspection of the observer sampling station.* Each observer sampling station must be inspected and approved by NMFS prior to its use for the first time and then one time each year within 12 months of the date of the most recent inspection with the following exceptions. If the observer sampling station is moved or if the space or equipment available to the observer is reduced or removed, the observer sampling station inspection report issued under this section is no longer valid, and the observer sampling station must be reinspected and approved by NMFS. Inspection of the observer sampling station is in addition to inspection of the at-sea scales by an authorized scale inspector required at paragraph (b)(2) of this section.

(i) *How does a vessel owner arrange for an observer sampling station inspection?* The time and place of the inspection may be arranged by submitting to NMFS a written request for an inspection. Inspections will be scheduled no later than 10 working days after NMFS receives a complete application for an inspection, including the following information:

(A) Name and signature of the person submitting the application, and the date of the application.

(B) Street address, business address, telephone number, and fax number of the person submitting the application.

(C) Whether the vessel or processor has received an observer sampling scale inspection before and, if so, the date of the most recent inspection report.

(D) Vessel name.

(E) Federal fishery permit number.

(F) Location of vessel where sampling station inspection is requested to occur, including street address and city.

(G) For catcher/processors using trawl gear and motherships, a diagram drawn to scale showing the location(s) where all CDQ and PSQ will be weighed, the location where observers will sample unsorted catch, the location of the observer sampling station as described at paragraph (d) of this section, including the observer sampling scale, the name of the manufacturer, model of the scale to weigh total catch, and the observer sampling scale.

(H) For all other vessels, a diagram drawn to scale showing the location(s) where catch comes on board the vessel, the location where observers will sample unsorted catch, the location of the observer sampling station, including the observer sampling scale, and the name of the manufacturer and model of the observer sampling scale.

(I) For all vessels, a copy of the most recent scale inspection report issued under paragraph (b)(2) of this section.

(ii) *Where will observer sampling station inspections be conducted?* Inspections will be conducted on vessels tied up at docks in Dutch Harbor, Alaska, and in the Puget Sound area of Washington State.

(iii) *Observer sampling station inspection report.* An observer sampling station inspection report, valid for 12 months from the date it is signed by NMFS, will be issued to the vessel owner if the observer sampling station meets the requirements in this paragraph (d). The vessel owner must maintain a current observer sampling station inspection report on board the vessel at all times when the vessel is required to provide an observer sampling station approved for use under this paragraph (d). The observer sampling station inspection report must be made available to the observer, NMFS personnel, or to an authorized officer upon request.

(e) *Certified bins for volumetric estimates of catch weight*—

(1) *Certification.* The information required in this paragraph (e) must be prepared, dated, and signed by a licensed engineer with no financial interest in fishing, fish processing, or fish tendering vessels. Complete bin certification documents must be submitted to the Regional Administrator prior to harvesting or receiving groundfish from a fishery in which certified bins are required and must be on board the vessel and available to the observer at all times.

(2) *Specifications*—(i) *Measurement and marking.* The volume of each bin must be determined by accurate measurement of the internal dimensions of the bin. The internal walls of the bin must be permanently marked and numbered in 10-cm increments indicating the level of fish in the bin in

cm. All marked increments and numerals must be readable from the outside of the bin through a viewing port or hatch at all times. Marked increments are not required on the wall in which the viewing port is located, unless such increments are necessary to determine the level of fish in the bin from another viewing port. Bins must be lighted in a manner that allows marked increments to be read from the outside of the bin by an observer or authorized officer. For bin certification documents dated after July 6, 1998, the numerals at the 10-cm increment marks must be at least 4 cm high.

(ii) *Viewing ports.* Each bin must have a viewing port or ports from which the internal bin markings and numerals on all walls of the bin can be seen from the outside of the bin, except that bin markings and numerals are not required on the wall in which the viewing port is placed, if that wall cannot be seen from any other viewing port in the bin.

(3) *Information required.* For bin certification documents submitted after July 6, 1998, the person certifying the bins must provide:

(i) The vessel name;

(ii) The date the engineer measured the bins and witnessed the location of the marked increments and numerals;

(iii) A diagram, to scale, of each bin showing the location of the marked increments on each internal wall of the bin, the location, and dimensions of each viewing port or hatch, and any additional information needed to estimate the volume of fish in the bin;

(iv) Tables indicating the volume of each certified bin in cubic meters for each 10-cm increment marked on the sides of the bins;

(v) Instructions for determining the volume of fish in each bin from the marked increments and table; and

(vi) The person's name and signature and the date on which the completed bin certification documents were signed.

(4) *Recertification.* The bin's volume and the marked and numbered increments must be recertified if the bin is modified in a way that changes its size or shape or if marking strips or marked increments are moved or added.

(5) *Operational requirements*—(i) *Placement of catch in certified bins.* All catch must be placed in a bin certified under this paragraph (e) to estimate total catch weight prior to sorting. Refrigerated seawater tanks may be used for volumetric estimates only if the tanks comply with all other requirements of this paragraph (e). No adjustments of volume will be made for the presence of water in the bin or tank.

(ii) *Prior notification.* Vessel operators must notify observers prior to any removal of fish from or addition of fish to each bin used for volumetric measurements of catch so that an observer may make bin volume estimates prior to fish being removed from or added to the bin. Once a volumetric estimate has been made, additional fish may not be added to the bin until at least half the original volume has been removed. Fish may not be removed from or added to a bin used for volumetric estimates of catch weight until an observer indicates that bin volume estimates have been completed and any samples of catch required by the observer have been taken.

(iii) Fish from separate hauls or deliveries from separate harvesting vessels may not be mixed in any bin used for volumetric measurements of catch.

(iv) The bins must not be filled in a manner that obstructs the viewing ports or prevents the observer from seeing the level of fish throughout the bin.

13. Section 679.30 is revised to read as follows:

§ 679.30 General CDQ regulations.

(a) *Application procedure.* The CDQ program is a voluntary program. Allocations of CDQ and PSQ are made to CDQ groups and not to vessels or processors fishing under contract with any CDQ group. Any vessel or processor harvesting or processing CDQ or PSQ under a CDP must comply with all other requirements of this part. In addition, the CDQ group is responsible to ensure that vessels and processors listed as eligible on the CDQ group's approved CDP comply with all requirements of this part while harvesting or processing CDQ species. Allocations of CDQ and PSQ are harvest privileges that expire upon the expiration of the CDP. When a CDP expires, further CDQ allocations are not implied or guaranteed, and a qualified applicant must re-apply for further allocations on a competitive basis with other qualified applicants. The CDQ allocations provide the means for CDQ groups to complete their CDQ projects. A qualified applicant may apply for CDQ and PSQ allocations by submitting a proposed CDP to the State during the CDQ application period that is announced by the State. A proposed CDP must include the following information:

(1) *Community development information.* Community development information includes:

(i) *Project description.* A detailed description of all proposed CDQ projects, including the short-and long-term benefits to the qualified applicant from the proposed CDQ projects. CDQ projects should not be designed with the expectation of CDQ allocations beyond those requested in the proposed CDP.

(ii) *Project schedule.* A schedule for the completion of each CDQ project with measurable milestones for determining the progress of each CDQ project.

(iii) *Employment.* The number of individuals to be employed through the CDP projects, and a description of the nature of the work and the career advancement potential for each type of work.

(iv) *Community eligibility.* A list of the participating communities. Each participating community must be listed in Table 7 to this part or meet the criteria for an eligible community under § 679.2.

(v) *Community support.* A demonstration of each participating community's support for the qualified applicant and the managing organization through an official letter approved by the governing body of each such community.

(2) *Managing organization information.* A proposed CDP must include the following information about the managing organization:

(i) *Structure and personnel.* A description of the management structure and key personnel of the managing organization, such as resumes and references, including the name, address, fax number, and telephone number of the qualified applicant's CDQ representative.

(ii) *Management qualifications.* A description of how the managing organization is qualified to carry out the CDP projects in the proposed CDP, and a demonstration that the managing organization has the management, technical expertise, and ability to manage CDQ allocations and prevent exceeding a CDQ or PSQ.

(iii) *Legal relationship.* Documentation of the legal relationship between the qualified applicant and the managing organization (if the managing organization is different from the qualified applicant) clearly describing the responsibilities and obligations of each party as demonstrated through a contract or other legally binding agreement.

(iv) *Board of directors.* The name, address, and telephone number of each member of the board of directors of the qualified applicant. If a qualified applicant represents more than one community, the board of directors of the qualified applicant must include at least one member from each of the communities represented.

(3) *Business information.* A proposed CDP must include the following business information:

(i) *Business relationships.* A description of all business relationships between the qualified applicant and all individuals who have a financial interest in a CDQ project or subsidiary venture, including, but not limited to, any arrangements for management and audit control and any joint venture arrangements, loans, or other partnership arrangements, including the distribution of proceeds among the parties.

(ii) *Profit sharing.* A description of all profit sharing arrangements.

(iii) *Funding.* A description of all funding and financing plans.

(iv) *General budget for implementing the CDP.* A general account of estimated income and expenditures for each CDQ project for the total number of calendar years that the CDP is in effect.

(v) *Financial statement for the qualified applicant.* The most recent audited income statement, balance sheet, cash flow statement, management letter, and agreed upon procedures report.

(vi) *Organizational chart.* A visual representation of the qualified applicant's entire organizational structure, including all divisions, subsidiaries, joint ventures, and partnerships. This chart must include the type of legal entity for all divisions, subsidiaries, joint ventures, and partnerships; state of registration of the legal entity; and percentage owned by the qualified applicant.

(4) *Request for CDQ and PSQ allocations.* A list of the percentage of each CDQ reserve and PSQ reserve, as defined at § 679.31(a) through (e), that is being requested. The request for allocations of CDQ and PSQ must identify percentage allocations requested for CDQ fisheries identified by the primary target species of the fishery as defined by the qualified applicant and the gear types of the vessels that will be used to harvest the catch.

(5) *Fishing plan for groundfish and halibut CDQ fisheries.* The following information must be provided for all vessels and processors that will be harvesting or processing groundfish and halibut CDQ.

(i) *List of eligible vessels and processors*—(A) *Vessels*—(*1*) *Information required for all vessels.* A list of the name, Federal fisheries permit number (if applicable), ADF&G vessel number, LOA, gear type, and vessel type (catcher vessel, catcher/processor, or mothership) for each vessel that will be used to catch or process CDQ. For each vessel, report only the gear types and vessel types that will be used while CDQ fishing. Any CDQ vessel that is exempt from the moratorium under § 679.4(c)(3)(v) *must be identified as such.*

(2) *Information required for observed vessels using trawl or hook-and-line gear and motherships taking deliveries from these vessels.* For each catcher/processor and catcher vessel 60 ft (18.29 m) LOA or greater using trawl or hook-and-line gear and not delivering unsorted codends, or for each mothership, the CDP must include the following information that will be used by NMFS to determine whether sufficient observer coverage is provided to sample each CDQ haul, set, or delivery. Provide the information for groundfish CDQ fishing as defined under § 679.2 and provide separate information by management area or fishery if information differs among management areas or fisheries.

(*i*) Number of CDQ observers that will be aboard the vessel. For catcher/processors using hook-and-line gear proposing to carry only one CDQ observer, the CDP must include vessel logbook or observer data that demonstrates that one CDQ observer can sample each set for species composition in one 12-hour shift per fishing day.

(*ii*) Average and maximum number of hauls, sets, or pots that will be retrieved on any given fishing day while groundfish CDQ fishing.

(*iii*) For vessels using trawl gear, the average and maximum total catch weight for any given haul while groundfish CDQ fishing.

(*iv*) For vessels using trawl gear, the number of hours necessary to process the average and maximum haul size while groundfish CDQ fishing.

(*v*) For vessels using hook-and-line gear, the average number of hooks in each set and estimated time it will take to retrieve each set while groundfish CDQ fishing.

(*vi*) Whether any halibut CDQ will be harvested by vessels groundfish CDQ fishing.

(B) *Shoreside processors or buying stations.* A list of the name, Federal processor permit number, and location of each shoreside processor or buying station that is required to have a Federal processor permit under § 679.4(f) and will take deliveries of, or process, CDQ catch.

(C) *Buyers of halibut CDQ.* A list of processors or registered buyers of halibut CDQ that are not required to have a Federal processor permit under § 679.4(f), including the name of the buyer or processor, mailing address, telephone number, and location where halibut CDQ will be landed.

(ii) *Sources of data or methods for estimating CDQ and PSQ catch.* The sources of data or methods that will be used to determine catch weight of CDQ and PSQ for each vessel or processor proposed as eligible under the CDP. For each vessel or processor, the CDP must specify whether the NMFS' standard sources of data set forth at § 679.32(d)(2) or some other alternative will be used. For catcher vessels using nontrawl gear, the CDP must also specify whether the vessel will be retaining all groundfish CDQ catch (Option 1) or will be discarding some groundfish CDQ catch at sea (Option 2). The qualified applicant may propose the use of an alternative method such as the sorting and weighing of all catch by species on processor vessels or using larger sample sizes than could be collected by one observer. NMFS will review the proposal and approve it or notify the qualified applicant in writing if the proposed alternative does not meet these requirements. The qualified applicant may remove the vessel or processor for which the alternative method is proposed from the proposed CDP to facilitate approval of the CDP and add the vessel or processor to the approved CDP by substantial amendment at a later date. Alternatives to the requirement for a certified scale or an observer sampling station may not be proposed. NMFS will review the alternative proposal to determine if it meets all of the following requirements:

(A) The alternative proposed must provide equivalent or better estimates than use of the NMFS standard data source would provide and the estimates must be independently verifiable;

(B) Each haul or set on an observed vessel must be able to be sampled by an observer for species composition;

(C) Any proposal to sort catch before it is weighed must assure that the sorting and weighing process will be monitored by an observer; and

(D) The time required for the CDQ observer to complete sampling, data recording, and data communication duties shall not exceed 12 hours in each 24-hour period and the CDQ observer is required to sample no more than 9 hours in each 24-hour period.

(iii) *Amendments to the list of eligible vessels and processors.* The list of eligible vessels and processors may be amended by submitting the information required in paragraphs (a)(5)(i) and (ii) of this section as an amendment to the approved CDP. A technical amendment may be used to remove any vessel from a CDP, to add any vessel to a CDP if the CDQ group will use NMFS' standard

sources of data to determine CDQ and PSQ catch for the vessel, or to add any vessel to a CDP for which an alternative method of determining CDQ and PSQ catch has been approved by NMFS under an approved CDP for another CDQ group. A substantial amendment must be used to add a vessel to an approved CDP if the CDQ group submits a proposed alternative method of determining CDQ and PSQ catch for NMFS review.

(6) *CDQ planning*—(i) *Transition plan.* A proposed CDP must include an overall plan and schedule for transition from reliance on CDQ allocations to self-sufficiency in fisheries. The plan for transition to self-sufficiency must be based on the qualified applicant's long-term revenue stream without CDQs.

(ii) *Post-allocation plan.* [Reserved]

(b) *Public hearings on CDQ application.* When the CDQ application period has ended, the State must hold a public hearing to obtain comments on the proposed CDPs from all interested persons. The hearing must cover the substance and content of proposed CDPs so that the general public, particularly the affected parties, have a reasonable opportunity to understand the impact of the proposed CDPs. The State must provide reasonable public notification of hearing date and location. At the time of public notification of the hearing, the State must make available for public review all State materials pertinent to the hearing.

(c) *Council consultation.* Before the State sends its recommendations for approval of proposed CDPs to NMFS, the State must consult with the Council and make available, upon request, the proposed CDPs that are not part of the State's recommendations.

(d) *Review and approval of proposed CDPs.* The State must transmit the proposed CDPs and its recommendations for approval of each of the proposed CDPs to NMFS, along with the findings and the rationale for the recommendations, by October 15 of the year prior to the first year of the proposed CDP, except in 1998, when CDPs for the 1998 through 2000 multispecies groundfish CDQs must be submitted by July 6, 1998. The State shall determine in its recommendations for approval of the proposed CDPs that each proposed CDP meets all applicable requirements of this part. Upon receipt by NMFS of the proposed CDPs and the State's recommendations for approval, NMFS will review the proposed CDPs and approve those that it determines meet all applicable requirements. NMFS shall approve or disapprove the State's recommendations within 45 days of their receipt. In the event of approval of the CDP, NMFS will notify the State in writing that the proposed CDP is approved by NMFS and is consistent with all requirements for CDPs. If NMFS finds that a proposed CDP does not comply with the requirements of this part, NMFS must so advise the State in writing, including the reasons thereof. The State may submit a revised proposed CDP along with revised recommendations for approval to NMFS.

(e) *Transfer.* CDQ groups may request that NMFS transfer CDQ allocations, CDQ, PSQ allocations, or PSQ from one group to another by each group filing an appropriate amendment to its CDP. Transfers of CDQ and PSQ allocations must be in whole integer percentages, and transfers of CDQ and PSQ must be in whole integer amounts. If NMFS approves both amendments, NMFS will make the requested transfer(s) by decreasing the account balance of the CDQ group from which the CDQ or PSQ species is transferred by the amount transferred and by increasing the account balance of the CDQ group receiving the transferred CDQ or PSQ species by the amount transferred. NMFS will not approve transfers to cover overages of CDQ or PSQ.

(1) *CDQ allocation.* CDQ groups may request that NMFS transfer any or all of one group's CDQ allocation to another by each group filing an amendment to its CDP through the CDP substantial amendment process set forth at paragraph (g)(4) of this section. The CDQ allocation will be transferred as of January 1 of the calendar year following the calendar year NMFS approves the amendments of both groups and is effective for the duration of the CDPs.

(2) *CDQ.* CDQ groups may request that NMFS transfer any or all of one group's CDQ for a calendar year to another by each group filing an appropriate amendment to its CDP. If the amount to be transferred is 10 percent or less of a group's initial CDQ amount for that year, that group's request may be made through the CDP technical amendment process set forth at paragraph (g)(5) of this section. If the amount to be transferred is greater than 10 percent of a group's initial CDQ amount for the year, that group's request must be made through the CDP substantial amendment process set forth at paragraph (g)(4) of this section. The CDQ will be transferred as of the date NMFS approves the amendments of both groups and is effective only for the remainder of the calendar year in which the transfer occurs.

(3) *PSQ allocation.* CDQ groups may request that NMFS transfer any or all of one group's PSQ allocation to another CDQ group through the CDP substantial amendment process set forth at paragraph (g)(4) of this section. Each group's request must be part of a request for the transfer of a CDQ allocation, and the requested amount of PSQ allocation must be the amount reasonably required for bycatch needs during the harvesting of the CDQ. Requests for the transfer of a PSQ allocation may be submitted to NMFS from January 1 through January 31. Requests for transfers of a PSQ allocation will not be accepted by NMFS at other times of the year. The PSQ allocation will be transferred as of January 1 of the calendar year following the calendar year NMFS approves the amendments of both groups and is effective for the duration of the CDPs.

(4) *PSQ.* CDQ groups may request that NMFS transfer any or all of one group's PSQ for one calendar year to another by each group filing an amendment to its CDP through the CDP substantial amendment process set forth at paragraph (g)(4) of this section. Each group's request must be part of a request for the transfer of CDQ, and the requested amount of PSQ must be the amount reasonably required for bycatch needs during the harvesting of the CDQ. Requests for the transfer of PSQ may be submitted to NMFS from January 1 through January 31. Requests for transfers of PSQ will not be accepted by NMFS at other times of the year. The PSQ will be transferred as of the date NMFS approves the amendments of both groups and is effective only for the remainder of the calendar year in which the transfer occurs.

(f) *CDQ group responsibilities.* A CDQ group's responsibilities include, but are not limited to, the following:

(1) Direct and supervise all activities of the managing organization;

(2) Maintain the capability to communicate with all vessels harvesting its CDQ and PSQ at all times;

(3) Monitor the catch of each CDQ or PSQ;

(4) Submit the CDQ catch report described at § 679.5(n)(2);

(5) Ensure that no CDQ, halibut PSQ, or crab PSQ is exceeded;

(6) Ensure that the CDQ group's CDQ harvesting vessels and CDQ processors will:

(i) Provide observer coverage, equipment, and operational requirements for CDQ catch monitoring;

(ii) Provide for the communication of observer data from their vessels to NMFS and the CDQ representative;

(iii) Maintain contact with the CDQ group for which it is harvesting CDQ and PSQ;

(iv) Cease fishing operations when requested by the CDQ group; and

(v) Comply with all requirements of this part while harvesting or processing CDQ species.

(7) Comply with all requirements of this part.

(g) *Monitoring of CDPs*—(1) *Annual progress report.* (i) The State must submit to NMFS, by October 31 of each year, an annual progress report for the previous calendar year for each CDP.

(ii) Annual progress reports must be organized on a project-by-project basis and include information for each CDQ project in the CDP describing how each scheduled milestone in the CDP has been met, and an estimation by the State of whether each of the CDQ projects in the CDP is likely to be successful.

(iii) The annual report must include a description by the State of any problems or issues in the CDP that the State encountered during the annual report year.

(2) *Annual budget report.* (i) Each CDQ group must submit to NMFS an annual budget report by December 15 preceding the year for which the annual budget applies.

(ii) An annual budget report is a detailed estimate of the income from the CDQ project and of the expenditures for each subsidiary, division, joint venture, partnership, investment activity, or CDQ project as described in paragraph (a)(1)(i) of this section for a calendar year. A CDQ group must identify the administrative costs for each CDQ project. The CDQ group's total administrative costs will be considered a separate CDQ project.

(iii) An annual budget report is approved upon receipt by NMFS, unless disapproved by NMFS in writing by December 31. If disapproved, the annual budget report will be returned to the CDQ group for revision and resubmittal to NMFS.

(3) *Annual budget reconciliation report.* A CDQ group must reconcile its annual budget by May 30 of the year following the year for which the annual budget applied. Reconciliation is an accounting of the annual budget's estimated income and expenditures with the actual income and expenditures, including the variance in dollars and variance in percentage for each CDQ project that is described in paragraph (a)(1)(i) of this section.

(4) *Substantial amendments.* A CDP is a working business plan and must be kept up to date.

(i) Substantial amendments to a CDP require a written request by the CDQ group to the State and NMFS for approval of the amendment. The State must forward the amendment to NMFS with a recommendation as to whether it should be approved.

(ii) NMFS will notify the State in writing of the approval or disapproval of the amendment within 30 days of receipt of both the amendment and the State's recommendation. Except for substantial amendments for the transfer of CDQ and PSQ, which are effective only for the remainder of the calendar year in which the transfer occurs (see paragraphs (e)(2) and (4) of this section), once a substantial amendment is approved by NMFS, the amendment will be effective for the duration of the CDP.

(iii) If NMFS determines that the CDP, if changed, would no longer meet the requirements of this subpart, NMFS will notify the State in writing of the reasons why the amendment cannot be approved.

(iv) For the purposes of this section, substantial amendments are defined as changes in a CDP, including, but not limited to:

(A) Any change in the list of communities comprising the CDQ group or replacement of the managing organization.

(B) A change in the CDP applicant's harvesting or processing partner.

(C) Funding a CDP project in excess of $100,000 that is not part of an approved general budget.

(D) More than a 20-percent increase in the annual budget of an approved CDP project.

(E) More than a 20-percent increase in actual expenditures over the approved annual budget for administrative operations.

(F) A change in the contractual agreement(s) between the CDQ group and its harvesting or processing partner or a change in a CDP project, if such change is deemed by the State or NMFS to be a material change.

(G) Any transfer of a CDQ allocation, PSQ allocation, PSQ, or a transfer of more than 10 percent of a CDQ.

(H) The addition of a vessel to a CDP if the CDQ group submits a proposed alternative method of determining CDQ and PSQ catch under paragraph (a)(5)(ii) of this section for NMFS review.

(v) The request for approval of a substantial amendment to a CDP shall include the following information:

(A) The background and justification for the amendment that explains why the proposed amendment is necessary and appropriate.

(B) An explanation of why the proposed change to the CDP is a substantial amendment.

(C) A description of the proposed amendment, explaining all changes to the CDP that result from the proposed amendment.

(D) A comparison of the original CDP text, with the text of the proposed changes to the CDP, and the revised pages of the CDP for replacement in the CDP binder. The revised pages must have the revision date noted, with the page number on all affected pages. The table of contents may also need to be revised to reflect any changes in pagination.

(E) Identification of any NMFS findings that would need to be modified if the amendment is approved, along with the proposed modified text.

(F) A description of how the proposed amendment meets the requirements of this subpart. Only those CDQ regulations that are affected by the proposed amendment need to be discussed.

(5) *Technical amendments.* Any change to a CDP that is not considered a substantial amendment under paragraph (g)(4)(iv) of this section is a technical amendment.

(i) The CDQ group must notify the State in writing of any technical amendment. Such notification must include a copy of the pages of the CDP that would be revised by the amendment, with the text highlighted to show the proposed deletions and additions, and a copy of the CDP pages as they would be revised by the proposed amendment for insertion into the CDP binder. All revised CDP pages must include the revision date, amendment identification number, and CDP page number. The table of contents may also need to be revised to reflect any changes in pagination.

(ii) The State must forward the technical amendment to NMFS with its recommendations for approval or disapproval of the amendment. A technical amendment is approved by NMFS and is effective when, after review, NMFS notifies the State in writing of the technical amendment's receipt and approval.

(h) *Suspension or termination of a CDP.* An annual progress report, required under paragraph (g)(1) of this section, will be used by the State to review each CDP to determine whether the CDP, CDQ, and PSQ allocations thereunder should be continued, decreased, partially suspended, suspended, or terminated under the following circumstances:

(1) If the State determines that the CDP will successfully meet its goals and objectives, the CDP may continue without any Secretarial action.

(2) If the State recommends to NMFS that an allocation be decreased, the State's recommendation for decrease

will be deemed approved if NMFS does not notify the State in writing within 30 days of receipt of the State's recommendation.

(3) If the State determines that a CDP has not successfully met its goals and objectives or appears unlikely to become successful, the State may submit a recommendation to NMFS that the CDP be partially suspended, suspended, or terminated. The State must set out, in writing, the reasons for recommending suspension or termination of the CDP.

(4) After review of the State's recommendation and reasons thereof, NMFS will notify the Governor, in writing, of approval or disapproval of the recommendation within 30 days of its receipt. In the case of suspension or termination, NMFS will publish notification in the **Federal Register**, with reasons thereof.

14. In § 679.31, the section heading and paragraph (e) are revised, and a new paragraph (g) is added to read as follows:

§ 679.31 CDQ reserves.

* * * * *

(e) *PSQ reserve.* (See § 679.21(e)(1)(i) and (e)(2)(ii)).

* * * * *

(g) *Non-specific CDQ reserve.* Annually, NMFS will apportion 15 percent of each squid, arrowtooth flounder, and ''other species'' CDQ for each CDQ group to a non-specific CDQ reserve. A CDQ group's non-specific CDQ reserve must be for the exclusive use of that CDQ group. A release from the non-specific CDQ reserve to the CDQ group's squid, arrowtooth flounder, or ''other species'' CDQ is a technical amendment as described in § 679.30(g)(5). The technical amendment must be approved before harvests relying on CDQ transferred from the non-specific CDQ reserve may be conducted.

15. Section 679.32 is revised to read as follows:

§ 679.32 Groundfish and halibut CDQ catch monitoring.

(a) *Applicability.* (1) The CDQ group and the operator or manager of a buying station, the operator of a vessel, and the manager of a shoreside processor must comply with the requirements of this section for all CDQ and PSQ caught while groundfish CDQ fishing as defined at § 679.2, with the exceptions listed in paragraphs (a)(2) and (a)(3) of this section. In addition, the CDQ group is responsible for ensuring that vessels and processors listed as eligible on the CDQ group's approved CDP comply with all requirements of this section while harvesting or processing CDQ species.

(2) *Pollock CDQ fishing in 1998 (applicable through December 31, 1998).* Regulations governing the catch of pollock CDQ while pollock CDQ fishing as defined in § 679.2 in 1998 are in paragraph (e) of this section. The catch of pollock by vessels that are not pollock CDQ fishing as defined in § 679.2 will not accrue against the pollock CDQ in 1998.

(3) *Fixed gear sablefish and halibut CDQ fishing in 1998 (applicable through December 31, 1998).* Regulations governing the catch of sablefish and halibut CDQ by vessels using fixed gear in 1998 are in paragraph (f) of this section.

(b) *PSQ catch.* Time and area closures required once a CDQ group has reached its salmon PSQ or crab PSQ are listed in § 679.7(d)(7) through (10). The catch of salmon or crab by vessels using other than trawl gear does not accrue to the PSQ for these species. The discard of halibut by vessels using pot or jig gear will not accrue to the halibut PSQ if this bycatch has been exempted from the halibut PSC limit under § 679.21(e)(5) in the annual specifications published in the **Federal Register**.

(c) *Requirements for vessels and processors.* In addition to complying with the minimum observer coverage requirements at § 679.50(c)(4), operators of vessels groundfish CDQ fishing and managers or operators of shoreside processing plants or buying stations taking deliveries from vessels groundfish CDQ fishing must comply with the following requirements:

(1) *Catcher vessels without an observer.* (i) Operators of catcher vessels less than 60 ft (18.29 m) LOA must retain all groundfish CDQ, halibut CDQ, and salmon PSQ until it is delivered to a processor that meets the requirements of paragraph (c)(3) or (c)(4) of this section. All halibut PSQ and crab PSQ must be discarded at sea. Operators of catcher vessels using trawl gear must report the at-sea discards of halibut PSQ or crab PSQ on the CDQ delivery report. Operators of catcher vessels using nontrawl gear must report the at-sea discards of halibut PSQ on the CDQ delivery report, unless exempted from accounting for halibut PSQ under paragraph (b) of this section.

(ii) *Catcher vessels delivering unsorted codends.* Operators of catcher vessels delivering unsorted codends to trawl catcher/processors or motherships must retain all CDQ and PSQ species and deliver them to a catcher/processor or mothership that meets the requirements of paragraph (c)(4) of this section.

(2) *Catcher vessels with observers.* Operators of catcher vessels equal to or greater than 60 ft (18.29 m) LOA must comply with the following requirements:

(i) *If using trawl gear, the vessel operator must:*

(A) Retain all CDQ species and salmon PSQ until they are delivered to a processor that meets the requirements of paragraph (c)(3) or (c)(4) of this section;

(B) Retain all halibut and crab PSQ in a bin or other location until it is counted and sampled by a CDQ observer; and

(C) Provide space on the deck of the vessel for the CDQ observer to sort and store catch samples and a place from which to hang the observer sampling scale.

(ii) *If using nontrawl gear, the vessel operator must either:*

(A) *Option 1: Retain all CDQ species.* Retain all CDQ species until they are delivered to a processor that meets the requirements of paragraph (c)(3) or (c)(4) of this section and have all of the halibut PSQ counted by the CDQ observer and sampled for length or average weight; or

(B) *Option 2: Discard some CDQ species at sea.* May discard some CDQ species at sea if the following requirements are met:

(1) *Observer sampling station.* The vessel owner provides an observer sampling station that complies with § 679.28(d) so that the CDQ observer can accurately determine the average weight of discarded CDQ species. A valid observer sampling station inspection report described at § 679.28(d)(8) must be on board the vessel at all times when a sampling station is required; and

(2) *Species composition.* Each CDQ set on vessels using hook-and-line gear is sampled for species composition by a CDQ observer.

(3) *Shoreside processors and buying stations.* The operator of a buying station or the manager of a shoreside processor must comply with all of the following requirements:

(i) *Prior notice to observer of offloading schedule.* Notify the CDQ observer of the offloading schedule of each groundfish CDQ delivery at least 1 hour prior to offloading to provide the CDQ observer an opportunity to monitor the sorting and weighing of the entire delivery.

(ii) *CDQ and PSQ by weight.* Sort and weigh on a scale approved by the State of Alaska under § 679.28(c) all groundfish and halibut CDQ or PSQ by species or species group.

(iii) *PSQ by number.* Sort and count all salmon and crab PSQ.

(iv) *CDQ and PSQ sorting and weighing.* Sorting and weighing of CDQ and PSQ must be monitored by a CDQ observer.

(v) *CDQ delivery report.* Submit a CDQ delivery report described at § 679.5(n)(1) for each delivery from vessels groundfish CDQ fishing as defined at § 679.2.

(4) *Catcher/processors and motherships.* The operator of a catcher/processor or a mothership must comply with the following requirements:

(i) *Prior notice to observer of CDQ catch.* Notify the CDQ observer(s) before CDQ catch is brought onboard the vessel and notify the CDQ observer(s) of the CDQ group and CDQ number associated with the CDQ catch.

(ii) *Observer sampling station.* Provide an observer sampling station as described at § 679.28(d). A valid observer sampling station inspection report described at § 679.28(d)(8) must be on board the vessel at all times when a sampling station is required.

(iii) *Catcher/processors using trawl gear and motherships.* The operator of a catcher/processor using trawl gear or of a mothership must weigh all catch on a scale that complies with the requirements of § 679.28(b). A valid scale inspection report described at § 679.28(b)(2) must be on board the vessel at all times when a scale is required. Catch from each CDQ haul must be weighed separately. Catch must not be sorted before it is weighed, unless a provision for doing so is approved by NMFS for the vessel in the CDP. Each CDQ haul must be sampled by a CDQ observer for species composition and the vessel operator must allow CDQ observers to use any scale approved by NMFS to weigh partial CDQ haul samples.

(iv) *Catcher/processors using nontrawl gear.* Each CDQ set on a vessel using hook-and-line gear must be sampled by a CDQ observer for species composition and average weight.

(d) *Recordkeeping and reporting*—(1) *Catch record.* The operator or manager of a buying station and the manager of a shoreside processor must submit to NMFS the CDQ delivery report required in § 679.5(n)(1). The CDQ representative must submit to NMFS the CDQ catch report required in § 679.5(n)(2). Additionally, all other applicable requirements in § 679.5 for groundfish fishing must be met.

(2) *Verification of CDQ and PSQ catch reports.* CDQ groups may specify the sources of data listed below as the sources they will use to determine CDQ and PSQ catch on the CDQ catch report by specifying ''NMFS standard sources of data'' in their CDP. In the case of a catcher vessel using nontrawl gear, the CDP must specify whether the vessel will be retaining all groundfish CDQ (Option 1) or discarding some groundfish CDQ species at sea (Option 2). CDQ species may be discarded at sea by these vessels only if the requirements of paragraph (c)(2)(ii)(B) of this section are met. NMFS will use the following sources to verify the CDQ catch reports, unless an alternative catch estimation procedure in the CDP is approved by NMFS under § 679.30(a)(5)(ii).

(i) *Catcher vessels less than 60 ft (18.29 m) LOA.* The weight or numbers of all CDQ and PSQ species will be the same as the information on the CDQ delivery report if all CDQ species and salmon PSQ are retained on board the vessel, delivered to a shoreside processor listed as eligible in the CDP, and sorted and weighed in compliance with paragraph (c)(3) of this section.

(ii) *Catcher vessels delivering unsorted codends.* The weight and numbers of CDQ and PSQ species will be determined by applying the species composition sampling data collected for each CDQ haul by the CDQ observer on the mothership to the total weight of each CDQ haul as determined by weighing all catch from each CDQ haul on a scale approved under § 679.28(b).

(iii) *Observed catcher vessels using trawl gear.* The weight of halibut and numbers of crab PSQ discarded at sea will be determined by using the CDQ observer's sample data. The weight or numbers of all groundfish CDQ and salmon PSQ will be the same as the information submitted on the CDQ delivery report if all CDQ species and salmon PSQ are retained on board the vessel until delivered to a processor listed as eligible in the CDP, and sorted and weighed in compliance with paragraph (c)(3) of this section.

(iv) *Observed catcher vessels using nontrawl gear*—(A) *Option 1.* The weight of halibut PSQ discarded at sea will be determined by using the CDQ observer's sample data. The weight of all groundfish CDQ will be the same as the information submitted on the CDQ delivery report if all CDQ species are retained on board the vessel until delivered to a processor, and sorted and weighed in compliance with paragraph (c)(3) of this section (Option 1); or

(B) *Option 2.* The weight of halibut PSQ and all groundfish CDQ species will be determined by applying the CDQ observer's species composition sampling data to the estimate of total catch weight if any CDQ species are discarded at sea.

(v) *Catcher/processors using trawl gear and motherships.* The weight and numbers of CDQ and PSQ species will be determined by applying the CDQ observer's species composition sampling data for each CDQ haul to the total weight of the CDQ haul as determined by weighing all catch from each CDQ haul on a scale certified under § 679.28(b).

(vi) *Catcher/processors using nontrawl gear.* The weight of halibut PSQ and all groundfish CDQ species will be determined by applying the CDQ observer's species composition sampling data to the estimate of total catch weight, if any CDQ species are discarded at sea.

(e) *Pollock CDQ (applicable through December 31, 1998)*—(1) *Applicability.* The owner or operator of a vessel pollock CDQ fishing as defined at § 679.2 and the owner or operator of a processor taking deliveries from vessels pollock CDQ fishing must comply with the requirements of this paragraph (e).

(2) *Catch of non-pollock.* The catch of all non-pollock species for which a TAC or PSC limit is specified will accrue against the TACs and PSC limits for moratorium groundfish species. The owner or operator of a vessel that is pollock CDQ fishing and the owner or operator of a processor taking deliveries from vessels that are pollock CDQ fishing must comply with regulations governing maximum retainable bycatch amounts and prohibited species status in the moratorium groundfish fisheries at § 679.20(d)(1)(iii).

(3) *Recordkeeping and reporting.* The CDQ representative, the operator or manager of a buying station, the operator of a vessel, and the manager of a shoreside processor must submit all applicable reports in § 679.5, including the CDQ delivery report and the CDQ catch report. Catch from the pollock CDQ fisheries must be identified separately from catch in other CDQ fisheries on the CDQ catch report. Harvest of species other than pollock in the pollock CDQ fisheries must not be reported on the CDQ catch report.

(4) *Observer coverage.* Two observers are required on all catcher/processors and motherships harvesting, processing, or taking deliveries of pollock CDQ; one observer is required on all catcher vessels harvesting pollock CDQ; and one observer is required in a shoreside processing plant while pollock CDQ is being delivered, sorted, or processed.

(5) *Estimation of the weight of pollock CDQ*—(i) *Shoreside processors and buying stations.* All pollock CDQ delivered to a shoreside processor or buying station must be weighed on a scale approved by the State of Alaska under § 679.28(c). The manager of each shoreside processor or buying station must notify the observer of the

offloading schedule of each pollock CDQ delivery at least 1 hour prior to offloading to provide the observer an opportunity to monitor the weighing of the entire delivery.

(ii) *Motherships and catcher/processors.* Operators of motherships and catcher/processors must provide holding bins and comply with the operational requirements at § 679.28(e) in order for volumetric estimates of total catch weight to be made.

(f) *Sablefish and halibut CDQ fisheries (applicable through December 31, 1998)*—(1) *Applicability.* The owner or operator of a vessel or processor harvesting or accepting deliveries of fixed gear sablefish or halibut CDQ in 1998 must comply with the requirements of this paragraph (f).

(2) *Catch of other groundfish.* All groundfish for which a TAC is specified and all prohibited species caught while fixed gear sablefish and halibut CDQ fishing will accrue against the TACs and PSC limits for moratorium groundfish species. Regulations governing maximum retainable bycatch amounts and prohibited species status in the moratorium groundfish fisheries at § 679.20(d)(1)(iii) must be complied with while fixed gear sablefish and halibut CDQ fishing.

(3) *Permits.* The managing organization responsible for carrying out an approved CDP must have a halibut and/or sablefish CDQ permit issued by the Regional Administrator. A copy of the halibut and/or sablefish CDQ permit must be carried on any fishing vessel operated by, or for, the managing organization and be made available for inspection by an authorized officer. Such halibut and/or sablefish CDQ permit is non-transferable and is effective for the duration of the CDP or until revoked, suspended, or modified.

(4) *CDQ cards.* All individuals named on an approved CDP application must have a valid halibut and/or sablefish CDQ card issued by the Regional Administrator before landing any halibut and/or sablefish. Each halibut and/or sablefish CDQ card will identify a CDQ permit number and the individual authorized by the managing organization to land halibut and/or sablefish for debit against its CDQ allocation.

(5) *Alteration.* No person may alter, erase, or mutilate a halibut and/or sablefish CDQ permit, card, registered buyer permit, or any valid and current permit or document issued under this part. Any such permit, card, or document that has been intentionally altered, erased, or mutilated is invalid.

(6) *Landings.* Halibut and/or sablefish harvested pursuant to an approved CDP may be landed only by a person with a valid halibut and/or sablefish CDQ card, delivered only to a person with a valid registered buyer permit, and reported in compliance with § 679.5(l)(1) and (l)(2).

(7) *Recordkeeping and reporting.* Vessels and processors with Federal fisheries or processor permits under § 679.4(f) must report all catch of groundfish, including sablefish CDQ, and prohibited species from the fixed gear sablefish and halibut CDQ fisheries on logbooks and weekly production reports required under § 679.5.

§§ 679.33 and 679.34 [Removed]

16. Sections 679.33 and 679.34 are removed.

17. In § 679.50, the section heading and the last sentence of paragraph (a) are revised, and paragraphs (c)(4), (d)(4), (h)(1)(i)(D), and (h)(1)(i)(E) are added to read as follows:

§ 679.50 Groundfish Observer Program.

(a) * * * Observer coverage for the CDQ fisheries obtained in compliance with paragraphs (c)(4) and (d)(4) of this section may not be used to comply with observer coverage requirements for non-CDQ groundfish fisheries specified in this section.

* * * * *

(c) *Observer requirements for vessels.* * * *

(4) *Groundfish CDQ fisheries.* Except as provided for under § 679.32(e), the owner or operator of a vessel groundfish CDQ fishing as defined at § 679.2 must comply with the following minimum observer coverage requirements each day that the vessel is used to harvest, transport, process, deliver, or take deliveries of CDQ or PSQ species. The time required for the CDQ observer to complete sampling, data recording, and data communication duties shall not exceed 12 hours in each 24-hour period and the CDQ observer is required to sample no more than 9 hours in each 24-hour period.

(i) *Motherships or catcher/processors using trawl gear.* A mothership or catcher/processor using trawl gear must have at least two CDQ observers as described at paragraphs (h)(1)(i)(D) and (E) of this section aboard the vessel, at least one of whom must be certified as a lead CDQ observer.

(ii) *Catcher/processors using hook-and-line gear.* A catcher/processor using hook-and-line gear must have at least two CDQ observers as described at paragraphs (h)(1)(i)(D) and (E) of this section aboard the vessel, unless NMFS approves a CDP authorizing the vessel to carry only one CDQ observer. At least one of the CDQ observers must be certified as a lead CDQ observer. A CDP authorizing the vessel to carry only one lead CDQ observer may be approved by NMFS if the CDQ group supplies vessel logbook or observer data that demonstrates that one CDQ observer can sample each CDQ set for species composition in one 12-hour shift per fishing day. NMFS will not approve a CDP that would require the observer to divide a 12-hour shift into shifts of less than 6 hours.

(iii) *Catcher/processors using pot gear.* A catcher/processor using pot gear must have at least one lead CDQ observer as described at paragraph (h)(1)(i)(E) of this section aboard the vessel.

(iv) *Catcher vessel.* A catcher vessel equal to or greater than 60 ft (18.29 m) LOA, except a catcher vessel that delivers only unsorted codends to a processor or another vessel, must have at least one lead CDQ observer as described at paragraph (h)(1)(i)(E) of this section aboard the vessel.

(d) *Observer requirements for shoreside processors.* * * *

(4) *Groundfish CDQ fisheries.* Each shoreside processor required to have a Federal processor permit under § 679.4(f) and taking deliveries of CDQ or PSQ from vessels groundfish CDQ fishing as defined at § 679.2 must have at least one lead CDQ observer as described at paragraph (h)(1)(i)(E) of this section present at all times while CDQ is being received or processed. The time required for the CDQ observer to complete sampling, data recording, and data communication duties shall not exceed 12 hours in each 24-hour period, and the CDQ observer is required to sample no more than 9 hours in each 24-hour period.

* * * * *

(h) * * *

(1) * * *

(i) * * *

(D) For purposes of the groundfish CDQ fisheries, a NMFS-certified CDQ observer must meet the following requirements.

(*1*) Be a prior observer in the groundfish fisheries off Alaska who has completed at least 60 days of observer data collection.

(*2*) Receive the rating of 1 for ''meets expectations'' or 2 for ''exceptional'' by NMFS for his or her most recent deployment.

(*3*) Successfully complete a NMFS-approved CDQ observer training and/or briefing as prescribed by NMFS and available from the Observer Program Office.

(*4*) Comply with all of the other requirements of this section.

(E) In addition to the requirements in paragraph (h)(1)(i)(D) of this section, to

be certified as a ''lead CDQ observer'', an observer must meet the following requirements.

(*1*) A ''lead CDQ observer'' on a catcher/processor using trawl gear or a mothership must have completed two observer cruises (contracts) and sampled at least 100 hauls on a catcher/processor using trawl gear or a mothership.

(*2*) A ''lead CDQ observer'' on a catcher vessel using trawl gear must have completed two observer cruises (contracts) and sampled at least 50 hauls on a catcher vessel using trawl gear.

(*3*) A ''lead CDQ observer'' on a vessel using nontrawl gear must have completed two observer cruises (contracts) of at least 10 days each and sampled at least 60 sets on a vessel using nontrawl gear.

(*4*) A ''lead CDQ observer'' in a shoreside processing plant must have observed at least 30 days in a shoreside processing plant.

* * * * *

[FR Doc. 98–14596 Filed 6–3–98; 8:45 am]

BILLING CODE 3510–22–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Part 404

[Regulations No. 4]

RIN 0960–AE83

Federal Old-Age, Survivors and Disability Insurance; Determining Disability and Blindness; Extension of Expiration Dates for Several Body System Listings

AGENCY: Social Security Administration.

ACTION: Final rule.

SUMMARY: The Social Security Administration (SSA) adjudicates claims at the third step of its sequential process for evaluating disability using the Listing of Impairments (the listings) under the Social Security and supplemental security income (SSI) programs. This rule extends the dates on which several body system listings will no longer be effective. We have made no revisions to the medical criteria in these listings; they remain the same as they now appear in the Code of Federal Regulations. These extensions will ensure that we continue to have medical evaluation criteria in the listings to adjudicate claims for disability based on impairments in these body systems at step three of our sequential evaluation process.

EFFECTIVE DATE: This regulation is effective June 4, 1998.

FOR FURTHER INFORMATION CONTACT: Acting Regulations Officer, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–3632. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213.

SUPPLEMENTARY INFORMATION: We use the listings in appendix 1 (Listing of Impairments) to subpart P of part 404 at the third step of the sequential evaluation process to evaluate claims filed by adults and individuals under age 18 for benefits based on disability under the Social Security and SSI programs. The listings are divided into parts A and B. We use the criteria in part A to evaluate impairments of adults. We use the criteria in part B first to evaluate impairments of individuals under age 18. If those criteria do not apply, then the medical criteria in part A will be used.

When we published revised listings in 1985 and subsequently, we indicated that medical advances in disability evaluation and treatment and program experience would require that the listings be periodically reviewed and updated. Accordingly, we established dates ranging from 3 to 8 years on which the various body system listings would no longer be effective unless extended by the Secretary of Health and Human Services or revised and promulgated again. Effective March 31, 1995, the authority to issue regulations was transferred to the Commissioner of Social Security by section 102 of Public Law 103–296, the Social Security Independence and Program Improvements Act of 1994.

In this final rule, we are extending the dates on which several body system listings will no longer be effective to July 1, 1999. These body system listings are: Growth Impairment (100.00), Special Senses and Speech (2.00 and 102.00), Multiple Body Systems (110.00), Neurological (11.00 and 111.00), and Immune System (14.00 and 114.00).

We last published final rules setting forth the current expiration date for the Multiple Body Systems and the Immune System on July 2, 1993 (58 FR 36008). We last extended the dates on which the other body system listings would no longer be effective in final rules published as follows:

December 6, 1993 (58 FR 64121): Special Senses and Speech and Neurological.

December 6, 1996 (61 FR 64615): Growth Impairment.

We believe that the requirements in these listings are still valid for our program purposes. Specifically, if we find that an individual has an impairment that meets the statutory duration requirement and also meets or is medically equivalent in severity to an impairment in the listings or functionally equivalent to the listings in SSI claims based on disability filed by individuals under age 18, we will find that the individual is disabled at the third step of the sequential evaluation process. Nevertheless, we have decided to review, over the next 12 months, the need to revise these listings and have, therefore, decided to extend the dates on which each of these listings will no longer be effective to July 1, 1999.

Regulatory Procedures

Pursuant to section 702(a)(5) of the Social Security Act, 42 U.S.C. 902(a)(5), as amended by section 102 of Public Law 103–296, SSA follows the Administrative Procedure Act (APA) rulemaking procedures specified in 5 U.S.C. 553 in the development of its regulations. The APA provides exceptions to its notice and public comment procedures when an agency finds there is good cause for dispensing with such procedures on the basis that they are impracticable, unnecessary, or contrary to the public interest. We have determined that, under 5 U.S.C. 553(b)(B), good cause exists for dispensing with the notice and public comment procedures in this case. Good cause exists because this regulation only extends the date on which these body system listings will no longer be effective. It makes no substantive changes to the listings. The current regulations expressly provide that the listings may be extended, as well as revised and promulgated again. Therefore, opportunity for prior comment is unnecessary, and we are issuing this regulation as a final rule.

In addition, we find good cause for dispensing with the 30-day delay in the effective date of a substantive rule, provided for by 5 U.S.C. 553(d). As explained above, we are not making any substantive changes in these body system listings. However, without an extension of the expiration dates for these listings, we will lack regulatory guidelines for assessing impairments in these body systems at the third step of the sequential evaluation processes after the current expiration dates of the listings. In order to ensure that we continue to have regulatory criteria for assessing impairments under these listings, we find that it is in the public interest to make this rule effective upon publication.

Executive Order 12866

We have consulted with the Office of Management and Budget (OMB) and determined that this rule does not meet

the criteria for a significant regulatory action under Executive Order 12866. Thus, it was not subject to OMB review.

Regulatory Flexibility Act

We certify that this regulation will not have a significant economic impact on a substantial number of small entities.

Therefore, a regulatory flexibility analysis as provided in the Regulatory Flexibility Act, as amended, is not required.

Paperwork Reduction Act

This regulation imposes no reporting/recordkeeping requirements necessitating clearance by OMB.

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

List of Subjects in 20 CFR Part 404

Administrative practice and procedure, Blind, Disability benefits, Old-Age, Survivors and Disability Insurance, Reporting and recordkeeping requirements, Social security.

Dated: May 27, 1998.

Kenneth S. Apfel,

Commissioner of Social Security.

For the reasons set forth in the preamble, part 404, subpart P, chapter III of title 20 of the Code of Federal Regulations is amended as set forth below.

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950—)

Subpart P—[Amended]

1. The authority citation for subpart P of part 404 continues to read as follows:

Authority: Secs. 202, 205(a), (b), and (d)–(h), 216(i), 221(a) and (i), 222(c), 223, 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 402, 405(a), (b), and (d)–(h), 416(i), 421(a) and (i), 422(c), 423, 425, and 902(a)(5)); sec. 211(b), Pub. L. 104–193, 110 Stat. 2105, 2189.

2. Appendix 1 to subpart P of part 404 is amended by revising items 1, 3, 11, 12, and 15 of the introductory text before Part A to read as follows:

Appendix 1 to Subpart P—Listing of Impairments

* * * * *

1. Growth Impairment (100.00): July 1, 1999.

* * * * *

3. Special Senses and Speech (2.00 and 102.00): July 1, 1999.

* * * * *

11. Multiple Body Systems (110.00): July 1, 1999.

12. Neurological (11.00 and 111.00): July 1, 1999.

* * * * *

15. Immune System (14.00 and 114.00): July 1, 1999.

* * * * *

[FR Doc. 98–14599 Filed 6–3–98; 8:45 am]

BILLING CODE 4190–29–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 107, 171, 172, 173, 174, 175, 176, 177

[Notice No. 98–6]

Hazardous Materials: Formal Interpretation of Regulations

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

ACTION: Formal interpretation of regulations.

SUMMARY: This document publishes a formal interpretation of the Hazardous Materials Regulations (HMR) concerning the responsibilities of a carrier when accepting hazardous materials for transportation in commerce. This interpretation is being published in order to facilitate better public understanding and awareness of the HMR.

EFFECTIVE DATE: June 4, 1998.

FOR FURTHER INFORMATION CONTACT: Frazer C. Hilder, Office of the Chief Counsel, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590–00001; telephone 202–366–4400.

SUPPLEMENTARY INFORMATION: As part of its implementation of the Federal hazardous material transportation law, 49 U.S.C. 5101 *et seq.*, RSPA issues the Hazardous Materials Regulations (HMR), 49 CFR parts 171–180. From time to time, RSPA's Chief Counsel issues formal interpretations of the HMR. These interpretations generally involve multimodal issues and are coordinated with the other DOT agencies which, together with RSPA, enforce the HMR: Federal Aviation Administration, Federal Highway Administration, Federal Railroad Administration, and United States Coast Guard. This document publishes a Chief Counsel's interpretation concerning the responsibilities of a carrier when accepting hazardous materials for transportation in commerce. This interpretation addresses issues raised in a letter by Mr. E.A. Altemos, of HMT Associates, and is consistent with an August 19, 1997 written response to Mr. Altemos by RSPA's Associate Administrator for Hazardous Materials Safety.

In addition to these infrequent formal interpretations by RSPA's Chief Counsel, RSPA's Office of Hazardous Materials Standards provides information and informal clarifications of the HMR on an ongoing basis, through (1) a telephonic information center (1–800–467–4922) to answer oral questions and (2) informal written interpretations or clarifications in response to written inquiries. RSPA's formal interpretations and informal letter clarifications (and additional information concerning the HMR) are also available through the Hazmat Safety Homepage at ''http://hazmat.dot.gov.'' In addition, some of RSPA's interpretations and clarifications may be reproduced or summarized in selected trade publications.

Further information concerning the availability of informal guidance and interpretations of the HMR is set forth in 49 CFR 107.14. RSPA believes that publication of its interpretations should promote a better understanding of the HMR and improve compliance with the HMR.

Issued in Washington, DC, on May 28, 1998.

Judith S. Kaleta,

Chief Counsel.

[Int. No. 98–1]

Background

Mr. E.A. Altemos, HMT Associates, requested clarification of requirements in the HMR concerning an air carrier's acceptance of packages containing hazardous materials. This inquiry concerned only the carrier's responsibilities relating to hazardous materials offered by another person, and not a carrier's transportation of its own materials or products. (For information on an air carrier's transportation of its own company materials, or ''COMAT,'' *see* ''COMAT FACTS'' in RSPA's January 1998 Safety Alert, available on the Hazmat Safety Homepage.)

Although Mr. Altemos's question was posed in the context of air transportation, the HMR requirements discussed in RSPA's interpretation apply to carriers by all modes of transportation.

Interpretation

Basic requirements in the HMR set forth in 49 CFR 171.2(a) and (b), and applicable to carriers in all modes of transportation, are that no person may

accept a hazardous material for transportation in commerce unless * * * the hazardous material is properly classed, described, packaged, marked, labeled, and in condition for shipment as required or

authorized by applicable requirements of [the HMR], or an exemption, approval, or registration issued under [the HMR] * * * [or]

transport a hazardous material in commerce unless * * * the hazardous material is handled and transported in accordance with applicable requirements of [the HMR], or an exemption, approval, or registration issued under [the HMR] * * *

A carrier's acceptance and transportation of hazardous materials can involve several different situations, including the following two ends of the spectrum:

1. the shipment is declared by the offeror, in one manner or another, to contain hazardous materials and complies (in whole or in part) with requirements in the HMR; or

2. whether intentionally or unintentionally, the shipment is not declared by the offeror to contain hazardous materials, and no attempt has been made to comply with the HMR (the ''undeclared'' or ''hidden'' shipment).

The Secretary of Transportation has delegated to agencies within the Department (Federal Aviation Administration, Federal Highway Administration, Federal Railroad Administration, United States Coast Guard, and Research and Special Programs Administration), the authority in 49 U.S.C. 5123 to assess a civil penalty against any person who ''knowingly violates'' any requirement in the HMR, including the provisions in § 171.2 (a) and (b) quoted above. Section 5123(a) provides that a person ''acts knowingly'' when

(A) the person has actual knowledge of the facts giving rise to the violation; or

(B) a reasonable person acting in the circumstances and exercising reasonable care would have that knowledge.

Accordingly, a carrier knowingly violates the HMR when the carrier accepts or transports a hazardous material with actual or constructive knowledge that a package contains a hazardous material which has not been packaged, marked, labeled, and described on a shipping paper as required by the HMR. This means that a carrier may not ignore readily apparent facts that indicate that either (1) a shipment declared to contain a hazardous material is not properly packaged, marked, labeled, placarded, or described on a shipping paper, or (2) a shipment actually contains a hazardous material governed by the HMR despite the fact that it is not marked, labeled, placarded, or described on a shipping paper as containing a hazardous material.

The Department's October 4, 1977 interpretation concerning 49 CFR 175.30 (reproduced below) relates to the first situation in the above paragraph, *i.e.,* when an air carrier receives a shipment accompanied by a shipping paper containing a shipper's certification that hazardous materials within the shipment have been classed, packaged, marked, labeled and accurately described as required. *See* 49 CFR 172.204. Whenever, in the course of examining the shipping paper and performing the required visual inspection of the package, an air carrier has reason to know of discrepancies, the carrier may not simply rely on the shipper's certification.

In the case of an undeclared or hidden shipment, all relevant facts must be considered to determine whether or not a reasonable person acting in the circumstances and exercising reasonable care would realize the presence of hazardous materials. In an enforcement proceeding, this is always a question of fact, to be determined by the fact-finder. Because innumerable fact patterns may exist, it is not practicable to set forth a list of specific criteria to govern whether or not the carrier has sufficient constructive knowledge of the presence of hazardous materials within an undeclared or hidden shipment to find a knowing violation of the HMR.

Information concerning the contents of suspicious packages must be pursued to determine whether hazardous materials have been improperly offered. A carrier's employees who accept packages for transportation must be trained to recognize a ''suspicious package,'' as part of their function—specific training as specified in 49 CFR 172.704(a)(2), because the legal standard remains the knowledge that a reasonable person acting in the circumstances and exercising reasonable care would have. Because this standard applies to all modes of transportation, a single training program and a uniform screening process can be developed for all of a company's employees involved in surface or air transportation.

At the same time, an offeror who fails to properly declare (and prepare) a shipment of hazardous materials bears the primary responsibility for a hidden shipment. Whenever hazardous materials have not been shipped in compliance with the HMR, DOT generally will attempt to identify and bring an enforcement proceeding against the person who first caused the transportation of a noncomplying shipment. The procedures applicable to DOT civil penalty enforcement cases procedures are set forth in 14 CFR 13.16 (FAA); 33 CFR part 1, subpart 1.07 (USCG); 49 CFR part 109, subpart B (FRA); 49 CFR part 107, subpart D (RSPA); and 49 CFR part 386 (FHWA).

To the extent that any carrier, regardless of the mode of transportation, is truly ''innocent'' in accepting an undeclared or hidden shipment of hazardous materials, it lacks the knowledge required for assessment of a civil penalty. However, when a carrier acts ''knowingly,'' as defined in 49 U.S.C. 5123(a), it must be considered subject to civil penalties. RSPA rejects any suggestion that a carrier would be deemed to have ''knowingly'' accepted a hazardous material for transportation, and be subject to civil penalties under 49 U.S.C. 5123, only when the material is described as a hazardous material on a shipping paper or other commercial documentation, or the package is marked or labeled in a manner as prescribed by the HMR. That approach would improperly limit a carrier's responsibility to situations involving a ''declared'' shipment.

DEPARTMENT OF TRANSPORTATION
Office of the Secretary

October 4, 1977.

Subj: Air Carrier's Responsibility for Inspection of Hazardous Materials Packages.

From: Assistant General Counsel for Materials Transportation Law.

To: Director, Transportation Safety Institute, TES–15

This is in response to your request of August 25, 1977, for our opinion as to whether an air carrier has a specific regulatory obligation to inspect hazardous materials packages prior to acceptance for air transportation to insure the shipper's compliance with specific regulatory requirements of parts 173 and 178. With the question, you have supplied your analysis and conclusion that except for the physical integrity inspection provided for in § 175.30(b) there is no duty on the air carrier to inspect hazardous materials packages prior to acceptance for transportation in order to determine compliance with the requirements of parts 173 and 178. Thus, it is your opinion that the air carrier may rely on the shipper's certification accompanying the shipment.

Section 175.30 prescribes the requirements that must be met before an air carrier accepts a shipment of hazardous materials for transportation. In achieving compliance with these requirements, the air carrier must, under paragraph (a), examine the shipment against the information supplied on the shipping paper, and must, under paragraph (b), make a visual inspection for leaks and damaged packaging. Consequently, I agree with your analysis and conclusion that the regulations permit the air carrier to rely on the information supplied on the shipping paper, unless, in complying with paragraphs (a) and (b), he has reason to know that there are discrepancies.

[FR Doc. 98–14561 Filed 6–3–98; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 961107312–7021–02; I.D. 052098B]

Fisheries of the Exclusive Economic Zone Off Alaska; Bycatch Rate Standards for the Second Half of 1998

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

ACTION: Pacific halibut and red king crab bycatch rate standards; request for comments.

SUMMARY: NMFS announces Pacific halibut and red king crab bycatch rate standards for the second half of 1998. Publication of these bycatch rate standards is required under regulations

implementing the vessel incentive program. This action is necessary to implement the bycatch rate standards for vessel operators who participate in the Alaska groundfish trawl fisheries. The intent of this action is to reduce prohibited species bycatch rates and promote conservation of groundfish and other fishery resources.

DATES: Effective 1201 hours, Alaska local time (A.l.t.), July 1, 1998, through 2400 hours, A.l.t., December 31, 1998. Comments on this action must be received at the following address no later than 4:30 p.m., A.l.t., June 30, 1998.

ADDRESSES: Comments should be mailed to Susan J. Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, NMFS, P.O. Box 21668, Juneau, AK 99802–1668, Attn: Lori Gravel; or be delivered to 709 West 9th Street, Federal Building, Room 401, Juneau, AK.

FOR FURTHER INFORMATION CONTACT: Susan J. Salveson, 907–586–7228.

SUPPLEMENTARY INFORMATION: The domestic groundfish fisheries in the exclusive economic zone of the Bering Sea and Aleutian Islands management area (BSAI) and Gulf of Alaska (GOA) are managed by NMFS according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutians Islands Area and the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMPs). The FMPs were prepared by the North Pacific Fishery Management Council (Council) under the authority of the Magnuson-Stevens Fishery Conservation and Management Act and are implemented by regulations governing the U.S. groundfish fisheries at 50 CFR part 679.

Regulations at § 679.21(f) implement a vessel incentive program to reduce halibut and red king crab bycatch rates in the groundfish trawl fisheries. Under the incentive program, operators of trawl vessels may not exceed Pacific halibut bycatch rate standards specified for the BSAI and GOA midwater pollock and ''other trawl'' fisheries and for the BSAI yellowfin sole and ''bottom pollock'' fisheries. Vessel operators also may not exceed red king crab bycatch standards specified for the BSAI yellowfin sole and ''other trawl'' fisheries in Bycatch Limitation Zone 1 (defined in § 679.2). The fisheries included under the incentive program are defined in regulations at § 679.21(f)(2).

Regulations at § 679.21(f)(3) require that halibut and red king crab bycatch rate standards for each fishery included under the incentive program be published in the **Federal Register**. The standards are in effect for specified seasons within the 6-month periods of January 1 through June 30 and of July 1 through December 31. For purposes of calculating vessel bycatch rates under the incentive program, 1998 fishing months were specified in the **Federal Register** on December 3, 1997 (62 FR 63878).

Halibut and red king crab bycatch rate standards for the first half of 1998 also were published in the **Federal Register** (62 FR 63878, December 3, 1997). As required by § 679.21(f)(3) and (4), the Administrator of the Alaska Region, NMFS (Regional Administrator), has established the bycatch rate standards for the second half of 1998 (July 1 through December 31). These standards were endorsed by the Council at its April 1998 meeting and are set out in Table 1. The bycatch rate standards are based on the following information:

1. Previous years' average observed bycatch rates;
2. Immediately preceding season's average observed bycatch rates;
3. The bycatch allowances and associated fishery closures specified under § 679.21(d) and (e);
4. Anticipated groundfish harvests;
5. Anticipated seasonal distribution of fishing effort for groundfish; and
6. Other information and criteria deemed relevant by the Regional Administrator.

TABLE 1.—BYCATCH RATE STANDARDS BY FISHERY FOR THE SECOND HALF OF 1998 FOR PURPOSES OF THE VESSEL INCENTIVE PROGRAM IN THE BSAI AND GOA

Fishery	Bycatch rate standard
Halibut bycatch rate standards (kilograms of halibut per metric ton of groundfish catch)	
BSAI Midwater pollock	1.0
BSAI Bottom pollock	5.0
BSAI Yellowfin sole	5.0
BSAI Other trawl	30.0
GOA Midwater pollock	1.0
GOA Other trawl	40.0
Zone 1 red king crab bycatch rate standards (number of crab per metric ton of groundfish catch)	
BSAI yellowfin sole	2.5
BSAI Other trawl	2.5

Bycatch Rate Standards for Pacific Halibut

The halibut bycatch rate standards for the 1998 trawl fisheries are unchanged from those implemented in 1997. The Regional Administrator based standards for the second half of 1998 on anticipated seasonal fishing effort for groundfish species and on 1994–1998 halibut bycatch rates observed in the trawl fisheries included under the incentive program. In determining these bycatch rate standards, the Regional Administrator considered the annual and seasonal bycatch specifications for the BSAI and GOA trawl fisheries (63 FR 12689, March 16, 1998, and 63 FR 12027, March 12, 1998, respectively). He further recognized that directed fishing for Pacific cod in the Western and Central Regulatory Areas of the GOA is closed for the remainder of the year. The GOA shallow-water and deep-water trawl fishery species complexes will reopen on July 1 when the third seasonal apportionment of the halibut bycatch limit established for the GOA trawl fisheries becomes available. In the Bering Sea, the rockfish and rock sole/flathead sole/other flatfish fishery categories will open or reopen on July 1 when seasonal apportionments of halibut bycatch allowances specified for these fisheries become available. The BSAI yellowfin sole and Pacific cod trawl fisheries are ongoing, and no

closure has yet been projected due to crab or halibut bycatch. The Regional Administrator also considered the September 1 opening date of the 1998 Bering Sea pollock 'B' season (§ 679.23(e)(2)) and the Gulf of Alaska third season pollock fishery (§ 679.23(d)(2)).

The halibut bycatch rate standards for the BSAI yellowfin sole and ''bottom pollock'' trawl fisheries are each set at 5 kilograms (kg) of halibut per metric ton (mt) of groundfish. These standards approximate the average annual rates observed on trawl vessels participating in these fisheries since 1992.

The halibut bycatch rate standard for the BSAI and GOA midwater pollock fisheries (1 kg of halibut/mt of groundfish) is higher than the bycatch rates normally experienced by vessels participating in these fisheries. This standard is intended to encourage vessel operators to maintain off-bottom trawl operations and limit further bycatch of halibut in the pollock fishery when halibut bycatch restrictions at § 679.21 prohibit directed fishing for pollock by vessels using non-pelagic trawl gear.

A bycatch rate standard of 30 kg halibut/mt of groundfish is established for the BSAI ''other trawl'' fishery. This standard has remained unchanged since 1992. A bycatch rate standard of 40 kg of halibut/mt of groundfish is established for the GOA ''other trawl'' fishery, which is unchanged since 1994. The considerations that support these bycatch rate standards for the ''other trawl'' fisheries are unchanged from previous years and are discussed in the **Federal Register** publications of 1995 bycatch rate standards (60 FR 2905, January 12, 1995, and 60 FR 27425, May 24, 1995).

Observer data collected from the 1997 GOA ''other trawl'' fishery show average third and fourth quarter halibut bycatch rates of 26 and 48 kg of halibut/mt of groundfish, respectively. The first quarter rate from 1998 was lower, at 23 kg of halibut/mt of groundfish. Observer data from the 1997 BSAI ''other trawl'' fishery show third and fourth quarter halibut bycatch rates of 21 and 3 kg of halibut/mt of groundfish, respectively. The first quarter rate from the 1998 BSAI ''other trawl'' fishery was 12 kg of halibut/mt of groundfish.

Bycatch Rate Standards for Red King Crab

The red king crab bycatch rate standard for the yellowfin sole and ''other trawl'' fisheries in Zone 1 of the Bering Sea subarea is 2.5 crab/mt of groundfish during the second half of 1998. This standard has remained unchanged since 1992.

Through May 2, 1998, the rock sole/flathead sole/other flatfish fishery category had taken 20 percent of its annual red king crab bycatch allowance. The Pacific cod and yellowfin sole fisheries have taken only 41 percent and 4 percent, respectively, of their bycatch allowances. The Regional Administrator anticipates that the non-pelagic trawl gear closure of the red king crab savings area in Zone 1 will continue to result in low red king crab bycatch rates for the remainder of the year and is maintaining the 2.5 red king crab/mt of groundfish bycatch rate standard.

The Regional Administrator has determined that the bycatch rate standards set out in Table 1 are appropriately based on the information and considerations necessary for such determinations under § 679.21(f)(4). These bycatch rate standards may be revised and published in the **Federal Register** when deemed appropriate by the Regional Administrator, pending his consideration of the information set forth at § 679.21(f)(4).

Classification

This action is taken under 50 CFR 679.21(f) and is exempt from OMB review under E.O. 12866.

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*

Dated: June 1, 1998.

Richard W. Surdi,

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

[FR Doc. 98–14869 Filed 6–1–98; 3:38 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 63, No. 107
Thursday, June 4, 1998

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 214

[INS No. 1811–96]

RIN 1115–AE61

Habitual Residence in the Territories and Possessions of the United States

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Proposed rule.

SUMMARY: This rule proposes to amend the Immigration and Naturalization Service (Service) regulations, by adding provisions governing rights and limitations on ''habitual residence'' under the Compact of Free Association between the United States and the Government of the Marshall Islands and the Government of the Federated States of Micronesia, and the Compact of Free Association between the United States and the Government of Palau (collectively, Compacts). This proposed rule defines ''habitual resident'' and imposes nondiscriminatory limitations on habitual residence in accordance with the provisions of the respective Compacts. The increasing population of citizens of the freely associated states (FAS) in the territories and possessions of the United States requires action to maintain the benefits to the citizens of the FAS of employment and education in the territories and possessions, and the economic benefit to the territories and possessions of their presence, while simultaneously minimizing costs resulting from granting unlimited access of such FAS citizens to the territories and possessions.

DATES: Written comments must be submitted on or before August 3, 1998.

ADDRESSES: Please submit written comments, in triplicate, to the Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street, NW., Room 5307, Washington, DC 20536. To ensure proper handling, please reference INS number 1811–96 on your correspondence. Comments are available for public inspection at the above address by calling (202) 514–3048 to arrange for an appointment.

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

SUPPLEMENTARY INFORMATION:

Background

With the enactment of Public Law 99–239, which approved the Compact between the United States and the Government of the Marshall Islands and the Government of the Federated States of Micronesia, and Public Law 99–658, which approved the Compact between the United States and Palau, the majority of citizens of these territories, the former Trust Territory of the Pacific Islands, now called the freely associated states (FAS), became eligible to enter, live, work, and be educated in the United States and its territories and possessions without regard to requirements in sections 212(a)(5)(A) and 212(a)(7)(A) and (B) of the Immigration and Nationality Act (Act). *See* section 141(a) of the Compacts. Both Compacts, at section 141(b), provide that the right of citizens of the FAS to establish habitual residence in a territory or possession of the United States may be subjected to nondiscriminatory limitations.

Section 643 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), requires the Commissioner to issue regulations regarding the ''rights of 'habitual residence' in the United States'' under the terms of the Compacts. Because the Compacts permit limitations on habitual residence only in the territories and possessions of the United States, the Service interprets section 643 of IIRIRA to apply only in the territories and possessions and not in the 50 states or the District of Columbia.

This proposed rule defines ''habitual resident'' and imposes minimal limitations on the right of FAS citizens to establish habitual residence within the territories and possessions of the United States. These limitations shall be applicable to habitual residents living in Guam, American Samoa, the United States Virgin Islands, and the Commonwealth of Puerto Rico. They do not apply to FAS citizens living in the 50 states or the District of Columbia.

Section 503 of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America, approved by Congress in Public Law 94–241, provides that the ''immigration and naturalization laws of the United States'' shall not apply to the Northern Mariana Islands ''except in the manner and to the extent made applicable to them by the Congress by law.'' To date, Congress has not taken action to apply the Federal immigration and naturalization laws to the Commonwealth of the Northern Mariana Islands (CNMI). This proposed rule, therefore, does not affect the right of FAS citizens to establish habitual residence in the CNMI as long as the Act has not been made applicable to the CNMI. The CNMI, however, may establish nondiscriminatory limitations on habitual residence that are consistent with the Compact and United States treaties and law.

''Habitual Resident'' Defined

In the proposed rule, the Service defines an habitual resident as an FAS citizen, as defined in section 141(a) of both Compacts, who has been physically present in a territory or possession of the United States for a cumulative total of 1 year during any continuous 24-month period, and who is not:

(1) A dependent of a representative to the United States pursuant to article V of either of the Compacts;

(2) A member of the United States Armed Forces serving in an active duty capacity;

(3) A nonimmigrant under another (non-Compact) category;

(4) A lawful permanent resident; or

(5) A full-time student under Compact provisions in a territory or possession of the United States and maintaining status.

Notwithstanding section 101(a)(15) of the Act, an FAS citizen who enters the United States under section 141 of the Compacts is a nonimmigrant under the terms of the Compacts. The term ''habitual residence,'' defined in section 461 of the Compacts, may be applied to FAS citizens and may be subjected to nondiscriminatory limitations under section 141(b) of the Compacts.

Community Concerns

Officials of the United States territories and possessions have reported that there are growing numbers of unemployed FAS citizens who reside in those territories and possessions and who adversely impact limited community resources. At the same time, these officials also express concern that imposing severe restrictions on the right of FAS citizens to establish habitual residence may deprive their communities of needed FAS workers who enhance the economy of those territories and possessions.

This rule addresses these concerns. The Service believes that imposing limitations on habitual residence will help to preserve the lawful status of the habitual residents who are lawfully and gainfully employed or otherwise financially self-sufficient. It will also protect the economies of the respective territories or possessions in which they reside by permitting the removal of FAS citizens who are not individually financially self-sufficient and are not being financially supported by their family. The Service interprets the provision in the Compacts that residence of less than 1 year is not ''habitual residence'' to mean residence in a territory or possession of the United States for aggregate periods of less than 1 year is not considered to be habitual residence. Therefore, this regulation will not affect FAS citizens whose residence in the territories and possessions of the United States adds up to less than 1 year.

Considerations for Rulemaking

Recommendations were solicited from the Governments of the Virgin Islands, Puerto Rico, Guam, and the Northern Mariana Islands by the United States Department of Interior, Office of Insular Affairs. The Office of Insular Affairs also solicited suggestions from the governments of the FAS. In its cover letter to the presidents of the freely associated states, the Office of Insular Affairs suggested that the imposition of limitations on habitual residence might include a provision allowing an habitual resident in a United States territory or possession to remain there if the habitual resident is gainfully employed.

The Office of Insular Affairs received three responses to its inquiry. The Governor of the United States Virgin Islands stated that migration of FAS citizens presented no adverse consequence for his territory. The President of Palau responded with general opposition to the imposition of any limitations. The Ambassador of the Federated States of Micronesia (FSM) to the United States stated that the FSM would not be concerned if the United States established a work requirement for FAS citizens who are habitual residents in a United States territory. He requested, however, that an unemployed spouse, pre-school children, and elderly relatives be allowed to reside in the territory with a working habitual resident.

Numerical Limitations Considered

Numerical limitations on habitual residence were considered by the Service and rejected at this time. The Service believes such limitations would not directly address the overall problem of restricting the entry of unemployed aliens into the U.S. territories and possessions. Further, such numerical limitations would possibly be more restrictive than is warranted at this time. The imposition of numerical limitations would fail to distinguish between employed and unemployed FAS citizens residing within U.S. possessions and territories. Newly arrived FAS citizens who desired to establish habitual residence after 1 year for the purpose of the continuation of lawful employment within a territory would be subject to numerical availability, while chronically unemployed habitual residents who have resided in the territory for a longer period, and who fell within a numerical availability quota, might continue in an indefinite lawful status. This method appears inequitable for the alien and unresponsive to the problem of restricting the flow of unemployed aliens into the territories.

Time Limitations Considered

Time limitations were also considered and rejected as not clearly necessary at this time. Lawfully and gainfully employed FAS citizens are currently recognized as an asset to their communities. They fulfill a need for labor and contribute to the economic development of the territory. Their continued presence eliminates the need for training newcomers. The earnings they send home also benefit the FAS economies. The imposition, therefore, of limitations on the maximum period of stay of these workers does not appear necessary at this time.

Limitations Based on Employment

Limiting habitual residence to lawfully and gainfully employed FAS citizens who are financially self-sufficient was determined to be the method which best complied with both the letter and the spirit of the Compacts and represented the minimal limitation currently needed to respond affirmatively and effectively to community concerns of the growing numbers of unemployed habitual residents. This method allows for the preservation of status for current habitual residents who are lawfully and gainfully employed, and allows for additional FAS citizens to engage in lawful and gainful employment in the territories and possessions of the United States in the future under the provisions of the Compact.

The Service considered the special problem posed by FAS citizens engaged in seasonal employment in United States territories and possessions and the need for the proposed rule to have provisions or exceptions regarding seasonal employment. Agriculture and commercial fishing are contributors to the economy of United States territories and possessions, and it is not the Service's intent to deprive these industries of needed FAS workers. The Service believes that the proposed rule as written is sufficient to protect the lawful nonimmigrant status of FAS seasonal workers, and that exceptions or provisions regarding seasonal workers are not needed at this time. The Service reserves the right to amend the rule to include provisions or exceptions regarding FAS seasonal workers employed in U.S. territories and possessions, should conditions warrant, and seeks public comment in this regard.

Annual Registration Considered

The Service considered imposing a registration requirement to ensure that FAS citizens after 1 year fall within the ambit of the limitations on habitual residence. The Service rejected annual registration due to resource limitations and the lack of empirical data establishing the necessity of registration at this time. Rather, the Service will assess and determine continued eligibility for habitual residence on a case-by-case basis when status eligibility is raised through complaints or other information available to the Service.

Proposed Limitations on Habitual Residence

In accordance with section 141(b) of the Compacts, the Service proposes to limit habitual residence in the territories and possessions of the United States (except the CNMI as long as the Act has not been made applicable to the CNMI) to those eligible FAS citizens:

(1) Who are actively engaged in lawful, full-time occupations; or

(2) Whose income or other financial resources meet or exceed the minimum Service guidelines for fiscal sufficiency,

which has been determined as at least 100 percent of the official poverty guidelines, see 45 CFR Pt. 1611, App. A, for an individual or for a family unit; and

(3) Who are not in receipt of public benefits in violation of section 401 or 411 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Personal Responsibility Act), Pub. L. 104–193, 110 Stat. 2261, 2268, as amended by sections 5561 and 5565 of the Balanced Budget Act of 1997, Pub. L. 105–33, 111 Stat. 638, 639 (''unauthorized public benefits'').

The unemployed spouse and all other eligible dependents, who are themselves FAS citizens and habitual residents, shall also be considered to be in lawful nonimmigrant status, provided they are financially supported by the principal habitual resident, and provided that, as a family unit, their income or other financial resources meet or exceed 100 percent of the official poverty guidelines for a family of the appropriate size, and they are not individually in receipt of unauthorized public benefits.

The Service proposes that the employment requirement of this provision not apply to habitual residents who are of lawful independent financial means, including those who are retired. To maintain their lawful status within the territories, habitual residents who are of lawful independent financial means or who are retired must, however, maintain an income or possess sufficient financial resources which meet or exceed 100 percent of the official poverty line for a family of the appropriate size. Further, such persons shall not be in receipt of unauthorized public benefits. These limitations are not discriminatory because they do not discriminate between or among the different freely associated states. Moreover, they do not discriminate against citizens of the FAS as compared with nonimmigrant citizens of other countries because there are no other nonimmigrant aliens who are permitted to enter, live, work, and be educated in the United States without regard to the requirements of section 212(a)(5)(A) and (7)(A) and (B) of the Immigration and Nationality Act.

Violation of Status

Any habitual resident who is unemployed for a period in excess of 60 consecutive days, or whose income as an individual or as a family unit falls below the official poverty guidelines, or who is in receipt of unauthorized public benefits, shall be considered to be in violation of status and subject to removal from the United States territory or possession in which he or she resides. The unemployed spouse and other eligible dependents of an habitual resident shall be considered to be in violation of status and subject to removal from the United States territory or possession in which they reside should the principal habitual resident become unemployed for a period of more than 60 consecutive days, or should their income as a family unit fall below the official poverty guidelines. This means that the principal habitual resident and his or her habitual resident dependents will all be considered to be in violation of status either if the principal is unemployed for more than 60 consecutive days, or if the family unit falls below the official poverty guidelines. Without the financial support of the principal habitual resident, the dependents would be in unlawful status. It is only through the support of the principal alien that they are considered to be in lawful status. Similarly, the principal alien must be held responsible for the support of his or her dependent family members in the territories and possessions so that the taxpayers will not be burdened by their support.

If any eligible dependent receives unauthorized public benefits, that individual dependent will be considered to be in violation of status and subject to removal from the U.S. territory or possession in which he or she resides. This provision will require the removal of any dependent who receives unauthorized public benefits, potentially resulting in the separation of families or the removal of an individual dependent who is elderly, infirm, of tender years, or otherwise unable to support himself or herself. For that reason, we invite public comment on whether the selection of this option in the proposed rule, i.e., removal of only the family member who receives unauthorized public benefits, is preferable to a provision requiring the removal of the entire family unit (the principal habitual resident and all of his or her habitual resident dependents) upon receipt by one family member of unauthorized public benefits.

Reservation of Right to Modify Limitations

This proposed rule establishes limitations on habitual residence at minimal levels. The Service reserves the right to modify these limitations and/or impose a registration requirement in the future should conditions warrant these actions.

Request for Comments

The Service seeks public comments regarding this proposed rule, including proposed limitations on habitual residence of individuals and families within the territories and possessions of the United States and the need for provisions or exceptions to the rule regarding FAS seasonal workers.

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 significant economic impact on a substantial number of small entities. This rule merely defines the rights and limitations of an existing class of nonimmigrants. It will affect certain individual aliens, not small entities.

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 1 year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates 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 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

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

Paperwork Reduction Act

This rule does not impose any new reporting or recordkeeping requirements.

List of Subjects in 8 CFR Part 214

Administrative practice and procedures, Aliens, Employment, Students.

Accordingly, part 214 of chapter I of title 8 of the Code of Federal Regulations is proposed to be amended as follows:

PART 214—NONIMMIGRANT CLASSES

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

Authority: 8 U.S.C. 1101, 1103, 1182, 1184, 1186a, 1187, 1221, 1281, 1282; 48 U.S.C. 1901 note, 1931 note; sec. 643, Pub. L. 104–208, 110 Stat. 3009–708; 8 CFR part 2.

2. Section 214.7 is added to read as follows:

§ 214.7 Habitual residence in the territories and possessions of the United States.

(a) *Definitions as used in this section.*

(1) *Dependent* means a citizen of the freely associated states (FAS), as defined in section 141(a) of the Compacts of Free Association, approved by Public Law 99–239 with respect to the Governments of the Marshall Islands and the Federated States of Micronesia, and by Public Law 99–658, with respect to the Republic of Palau (Compacts), who is a habitual resident, reliant on a principal habitual resident for support, and:

(i) The unemployed spouse of a principal habitual resident;

(ii) A child, unmarried and under 21 years of age, of a principal habitual resident or of his or her unemployed spouse;

(iii) The parent of a principal habitual resident; or

(iv) The parent of the unemployed spouse of a principal habitual resident.

(2) *Family unit* means a principal habitual resident and his or her dependents.

(3)(i) *Full-time employment* means any lawful occupation of a current and continuing nature that provides:

(A) Forty hours of gainful employment each week; or

(B) An annual income that meets or exceeds 100 percent of the official poverty guidelines, see 45 CFR part 1611, appendix A, for an individual or a family unit of the appropriate size.

(ii) For purposes of computing ''full-time employment,'' while attending an accredited college in the territory on a part-time basis, each college credit-hour of study diminishes by 3 hours the 40-hour gainful employment requirement.

(4) *Habitual resident* means an FAS citizen as defined in section 141(a) of the Compacts who has been physically present in a territory or possession of the United States (except the CNMI, as long as the Act has not been made applicable to the CNMI), after admission under section 141(a) of the respective Compact, for a cumulative total of 1 year during any continuous 24-month period, except that no period of time in which the citizen of the FAS is in a territory or possession of the United States as a:

(i) Full-time student under Compact provisions;

(ii) Dependent of a resident representative as described in section 152 of the Compacts;

(iii) Member of the United States Armed Forces serving in an active duty capacity;

(iv) Nonimmigrant under another (non-Compact) category; or

(v) Lawful permanent resident of the United States, shall be taken into account in determining the period of habitual residence in the territories or possessions of the United States.

(5) *Principal habitual resident* means an employed FAS citizen, or FAS citizen of lawful independent means, or retired FAS citizen, upon whose lawful status the unemployed spouse and all unemployed dependents are reliant.

(b) *General.* The regulations in this section regarding habitual residence in the territories and possessions of the United States are applicable to habitual residents living in Guam, American Samoa, the United States Virgin Islands, the Commonwealth of Puerto Rico, and any other territory or possession of the United States if the Immigration and Nationality Act is applicable in that territory or possession.

(c) *Rights.* Under the provisions of the Compacts, FAS citizens, who are eligible Compact entrants pursuant to section 141(a) of the Compacts, have the right to enter, reside, and work in the United States, its territories or possessions in nonimmigrant status and without regard to sections 212(a)(5)(A) and 212(a)(7) (A) and (B) of the Act.

(d) *Limitations.* The right of eligible FAS citizens to establish habitual residence in a lawful nonimmigrant status within a possession or territory is limited to those eligible FAS citizens who:

(1)(i) Are actively engaged in a lawful, full-time occupation; or

(ii) Possess an annual income of sufficient financial resources which meet or exceed 100 percent of the official poverty guidelines; and

(2) Are not in receipt of public benefits, in violation of section 401 or 411 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104–193, 110 Stat. 2261, 2268, as amended by sections 5561 and 5565 of the Balanced Budget Act of 1997, Public Law 105–33, 111 Stat. 638, 639 (''unauthorized public benefits'').

(e) *Dependents.* The dependent of an habitual resident, or of the spouse of an habitual resident, who is an FAS entrant and otherwise in lawful status, shall also be considered to be in lawful nonimmigrant status provided the dependent is financially supported by the principal habitual resident; the financial resources of the family unit meet or exceed 100 percent of the official poverty guidelines, see 45 CFR part 1611, appendix A, for a family unit of the appropriate size; and the dependent is not in receipt of unauthorized public benefits.

(f) *Investors.* An FAS investor, for the purposes of this section, shall be considered to be self-employed and shall be subject to the benefits, limitations, and requirements contained in this section.

(g) *Violation of status.* Any habitual resident who ceases to work for a period exceeding 60 consecutive days for reasons other than a lawful strike or other lawful labor dispute involving work stoppage; or whose annual income or financial resources, as an individual or as a family unit, fall below the official poverty guidelines; or who as an individual receives unauthorized public benefits, shall be considered to be in violation of status pursuant to section 237(a)(1)(C)(i) of the Act and subject to removal from the United States territory or possession in which he or she resides.

(h) *Dependents subject to removal.* A dependent of an habitual resident who is in lawful habitual resident status solely due to his or her relationship with a principal habitual resident, shall lose such lawful status and be subject to removal from the United States territory or possession in which he or she resides if:

(1) The principal habitual resident ceases to work for a period exceeding 60 consecutive days;

(2) The annual family income or financial resources of the dependent's

family unit fall below the official poverty guidelines; or

(3) The dependent receives unauthorized public benefits.

Dated: May 28, 1998.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 98–14656 Filed 6–3–98; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 214

[INS 1769–96]

RIN 1115–AE–38

Petitioning Requirements for the H Nonimmigrant Classification

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Proposed rule.

SUMMARY: This rule proposes to amend the Immigration and Naturalization Service's (Service) regulations to accommodate the needs of certain United States employers with respect to the filing of new and amended petitions for H–1B nonimmigrant workers. This rule was written in response to a number of complaints received from certain industries which asserted that the current H regulations contain requirements with which some U.S. employers cannot comply. In addition, the current regulations contain certain procedures which are burdensome to both the Service and to the public. Specifically, this rule proposes to amend the Service's regulation with regard to the submission of itineraries with certain H–1B petitions and to amend the Service's regulations regarding the H–1B classification by allowing petitioners to obtain and submit the required certified labor condition application after the petition is initially filed with the Service, but before the petition is adjudicated. Finally, this rule proposes to amend the Service's regulation regarding the revocation of approved H petitions where the beneficiary is no longer employed by the petitioner. This rule will make the H–1B nonimmigrant classification easier for certain U.S. employers to use and will make the requirements for the H–1B nonimmigrant classification more consistent with the practices of the business world.

DATES: Written comments must be submitted on or before August 3, 1998.

ADDRESSES: Please submit written comments, in triplicate, to the Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street, NW., Room 5307, Washington, DC 20536. To ensure proper handling, please reference the INS number 1769–96 on your correspondence. Comments are available for public inspection at the above address by calling (202) 514–3048 to arrange for an appointment.

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

SUPPLEMENTARY INFORMATION: The current regulation at 8 CFR 214.2(h)(2)(i)(B) provides that an H petition which requires an alien beneficiary to perform services in more than one location must include an itinerary with dates and locations of the services or training to be performed. This regulatory provision was promulgated primarily to address certain practices in the entertainment industry, which, prior to the passage of the Immigration Act of 1990, was one of the largest users of the H–1B classification. (Entertainers now typically enter the United States in the O and P nonimmigrant classifications.) Specifically, this regulation was intended to preclude foreign entertainers who were admitted in H classification for the purpose of performing at a specific engagement from engaging in freelance work in this country subsequent to their admission. The regulation was designed to ensure that aliens seeking H nonimmigrant status have an actual job offer and are not coming to the United States for the purpose of seeking employment following arrival in this country.

Since promulgation of this regulation, however, many industries in the United States, such as the health care and computer consulting industries, have begun to rely more frequently on the use of contract workers. It has been the experience of the Service that many bona fide businesses which provide contract workers to certain industries under the H–1B classification have experienced difficulty in providing complete and detailed itineraries due to the unique employment practices of such industries. For example, companies which are in the business of contracting out physical therapists or computer professionals often get requests from customers to fill a position with as little as 1 day advance notice. Clearly an H–1B petitioner in this situation could not know of all particular contract jobs at the time that it first files the H–1B petition with the Service. As a result, many such bona fide employment contractors do not know all of the locations where a contract worker will be employed at the time the Form I–129, Petition for a Nonimmigrant Worker, is initially filed.

Moreover, some employers who use the H–1B classification may have a legitimate, but unforeseeable, need to transfer their employees on short notice from one work site to another within the organization, such as from the employer's Los Angeles office to its New York office. Under the current regulation, however, such an employer is required to submit with its petition a complete itinerary listing all of the locations where the contract workers will be employed. The regulation as now written, therefore, does not fully reflect current legitimate business practices.

In response to these problems, the Service now proposes to amend its regulations at 8 CFR 214.2(h)(2)(i)(B) and at 8 CFR 214.2(h)(2)(i)(F) to allow certain petitioners to submit a general statement describing the locations where the alien is to be employed, thereby eliminating the necessity of submitting a complete itinerary. A complete itinerary must be submitted only in those instances where the employer is aware of the actual itinerary or where the petitioner is an agent that does not actually employ the beneficiary but merely represents the alien and the alien's employer.

In those instances where the employer does not yet know the alien's complete itinerary at the time the petition is filed, the employer must submit, in lieu of a complete itinerary, a list of the places where it knows the beneficiary will definitely be employed, together with a description of the alien's job duties at those locations. In addition, the employer must submit, to the extent possible, a list describing the alien's possible places of employment and the duties which the alien would perform at such locations. The employer may also be asked to submit a letter with the petition describing its past hiring practices, including a list of past places where it has employed similarly situated persons. The letter must describe the employer's tentative plans to use the beneficiary in an H–1B capacity in the future. However, the absence of a past hiring practice is not a bar to the approval of the petition. Petitions filed without any itinerary may not be approved since this type of petition involves purely speculative employment. Of course, the petitioner

must also submit all other documentary evidence required by the regulation for H–1B classification.

It is important to note that this proposed rule affects only those entities which are the actual employer of the alien, such as employment contractors and direct employers. In this regard, an employment contractor is one which employs the alien but assigns the alien to work at a different location than the contractor's place of business, based on the terms of a contract with a person or entity seeking the employer's services. A direct employer is one which hires the alien and assigns the alien to work at the employer's place of business. In both instances, the petitioner is the employer of the alien and retains the ability to hire and fire the alien.

An agent who represents both the alien and the alien's employer is not the alien's employer and is required under this proposed rule to submit a complete itinerary. A typical example of this type of agency is the sports agent who has a contract with a sports star and who solicits potential employers in order to obtain the best deal for the alien. Recruitment agencies and entities which merely locate an alien for employers are not the actual employer of the alien and do not fit the Service's definition of an agent. As a result they may not file an H–1B petition.

Historically, the Service has not granted H–1B classification on the basis of speculative, or undetermined, prospective employment. The H–1B classification is not intended as a vehicle for an alien to engage in a job search within the United States, or for employers to bring in temporary foreign workers to meet possible workforce needs arising from potential business expansions or the expectation of potential new customers or contracts. To determine whether an alien is properly classifiable as an H–1B nonimmigrant under the statute, the Service must first examine the duties of the position to be occupied to ascertain whether the duties of the position require the attainment of a specific bachelor's degree. See section 214(i) of the Immigration and Nationality Act (the ''Act''). The Service must then determine whether the alien has the appropriate degree for the occupation. In the case of speculative employment, the Service is unable to perform either part of this two-prong analysis and, therefore, is unable to adjudicate properly a request for H–1B classification. Moreover, there is no assurance that the alien will engage in a specialty occupation upon arrival in this country.

To ensure that petitioners will not use the H–1B classification for speculative employment, this proposed regulation would require petitioners to establish that they, in fact, have employment in a specialty occupation available for the alien at the time that the petition is initially filed. Under this proposed rule, the petitioner would be required to establish, both through the submission of evidence relating to its past employment practices and through the submission of evidence relating to its employment plans for the beneficiary, that the alien will, in fact, commence work in a speciality occupation immediately upon admission in H classification. The petitioner must be able to demonstrate its need for the alien's services within the specialty occupation described in the petition when the petition is filed. It should be noted that this proposed regulation would not relieve the petitioner of its responsibility to file an amended petition when required, for example, when the beneficiary's transfer to a new work site necessitates the filing of a new labor condition application or when the beneficiary is required to obtain a new state license in order to commence employment at the new location. In light of the existing statutory requirements for H–1B classification and the Department of Labor's regulations regarding labor condition applications, the Service is confident that the proposed regulation would ensure that U.S. workers continue to receive protection from employers who might attempt to abuse the H–1B nonimmigrant classification.

Finally, as previously indicated, the regulatory requirement relating to the submission of a complete itinerary was geared primarily for the entertainment industry, which, in light of changes under the Immigration Act of 1990, generally no longer uses the H–1B nonimmigrant classification. While it is preferable that all H–1B petitions be accompanied by complete itineraries listing the dates and places of the alien's employment, the Service recognizes such an across-the-board requirement is no longer practical in today's business environment.

It should be noted that a petition filed by an agent who is not the actual employer of the alien, as described in 8 CFR 214.2(h)(2)(i)(F)(*1*), must be accompanied by an itinerary. The Service wishes to retain strict control over petitions filed under these circumstances since, as noted above, this type of agent, unlike an employment contractor, is not the actual employer of the alien. In such a case, unless the agent submits a complete itinerary, the Service cannot be assured that the alien will be employed continuously as a specialty worker following admission to this country. Moreover, in such a situation, the Service cannot approve the H classification since there would not exist a valid labor condition application for each location where the alien will be employed.

The Service recognizes that implementation of this rule would remove some of the controls which it currently has over prospective H–1B employers at the time they initially file their petitions. To ensure that employers have complied with the terms of the initial petition and supporting labor condition application, the Service proposes to amend its regulations at 8 CFR 214.2(h)(15)(ii)(B)(*1*) relating to extensions of H–1B petitions to include clear language providing Service directors with the authority to require petitioners to submit evidence regarding the alien beneficiary's employment activities under the initial or prior approved petition or petitions.

The Service also proposes to revise 8 CFR 214.2(h)(2)(i)(E) to provide concrete examples of certain common situations where an amended H–1B petition need or need not be filed. While the examples are by no means intended to be exhaustive, the Service believes that such clarification is in the public interest. It should be noted that the Service has previously provided guidance to the public on this issue through a policy memorandum dated October 22, 1992, signed by James J. Hogan, Executive Associate Commissioner, Operations. Hence, the examples described in the proposed regulation merely codify longstanding Service policy and practice.

The proposed rule addresses the following situations. First, where an employer is required, under relevant Department of Labor regulations, to file a new labor condition application, such as following certain temporary or permanent transfers, the employer will also be required to file an amended petition. On the other hand, when an H–1B nonimmigrant is transferred by an employer to another work site within the area covered by the supporting labor condition application, and there are no other changes in the nature or terms of the H–1B nonimmigrant's employment, the employer need not file an amended petition. Second, an employer will be required to file an amended petition where the alien's duties change from one specialty occupation to another. An employer need not file an amended petition, however, where there is a mere

change in the petitioner's name, without a change in the underlying nature or terms of the H–1B employment. In such a situation, the petitioner may simply notify the Service of its name change when and if it files an application to extend the alien's nonimmigrant stay. The Service is amenable to considering additional suggestions from the public for streamlining the amended petition process.

The Service proposes to amend 8 CFR 214.2(h)(11) (i), (ii), and (iii) to indicate that a petition for an H nonimmigrant alien will be automatically revoked if the petitioner notifies the Service that the beneficiary is no longer employed by the petitioning entity. Under the current regulation, when the petitioner notifies the Service that the beneficiary is no longer employed by it in the capacity specified in the petition, the Service is required to send the petitioner a notice of intent to revoke the petition. (See 8 CFR 214.2(h)(11)(iii)(A)(*1*).) This process requires the petitioner to respond to the notice of intent, and then for the Service to take action based on the petitioner's subsequent response. Since the petitioner is the entity which supplied the Service with the information concerning the alien's employment, the current procedure creates unnecessary burdens on both the petitioner and the Service and, therefore, appears to be inappropriate. Moreover, this proposed change will bring the H regulation into conformity with the O and P regulations in this regard.

Regulatory Flexibility Act

The Commissioner of the Immigration and Naturalization Service, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that the rule will not have a significant economic impact on a substantial number of small entities. This regulation eases certain requirements which some businesses find burdensome by allowing various petitioners the option of submitting a general statement describing the locations where the beneficiary is to be employed, along with other supporting documentation, in lieu of submitting a complete itinerary when filing an H–1B petition.

In addition, the proposed rule also eases other filing requirements associated with the submittal of an H–1B petition by allowing a petitioner the option of submitting a required labor condition application from the Department of Labor after the petition has been filed with the Service. Finally, the regulation also eliminates the requirement that a petitioner respond to a notice of intent to revoke a petition in instances where the petitioner initiated the revocation process by notifying the Service that the beneficiary is no longer employed by the petitioner.

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 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. Accordingly, this regulation has been submitted to the Office of Management and Budget for review.

Executive Order 12612

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

Executive Order 12988

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

Paperwork Reduction Act

The information collection requirement contained in this rule has been cleared by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act. The OMB clearance number for this collection is 1115–0168.

List of Subjects in 8 CFR Part 214

Administrative practice and procedures, Aliens, Employment, Reporting and recordkeeping requirements.

Accordingly, chapter I of title 8 of the Code of Federal Regulations is proposed to be amended as follows:

PART 214—NONIMMIGRANT CLASSES

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

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

2. Section 214.2 is amended by:
a. Revising paragraph (h)(2)(i)(B);
b. Revising paragraph (h)(2)(i)(E);
c. Revising paragraph (h)(2)(i)(F);
d. Revising paragraph (h)(4)(i)(B)(*1*);
e. Revising paragraph (h)(4)(iii)(B)(*1*);
f. Revising paragraph (h)(11) (i), (ii), and (iii); and by
h. Revising paragraph (h)(15)(ii)(B)(*1*) to read as follows:

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

* * * * *

(h) * * *
(2) * * *
(i) * * *

(B) Services or training in more than one location.—(*1*) *H–1B petitions.* An H–1B petition which require services to be performed or training to be received in more than one location must include, to the extent possible, a complete itinerary with the dates and locations of the services or training to be performed. The petition must be filed with the Service Center having jurisdiction over the place where the petitioner is located. The address which the petitioner specifies as its location on the petition shall be where the petitioner is located for purposes of this paragraph. If the petitioner has not yet determined all of the locations where the beneficiary might be employed at the time of filing, the petitioner must provide an itinerary of all definite employment and provide a description of any proposed or possible employment for the period of time covered by the petition. Petitions filed by an agent must also comport with 8 CFR 214.2(h)(2)(i)(F).

(*2*) *Other H petitions.* A petition for an H–2A, H–2B, or H–3 nonimmigrant alien which requires services to be performed or training to be received in

more than one location must include a complete itinerary with the dates and locations of the services or training to be performed. The petition must be filed with the Service Center having jurisdiction over the area where the petitioner is located. The address which the petitioner specifies on the petition as its location shall be where the petitioner is located for purposes of this paragraph.

* * * * *

(E) *Amended petition—(1) General.* A nonimmigrant H petitioner which continues to employ the beneficiary shall file an amended petition on Form I–129, with fee, with the Service Center where the original petition was filed to reflect any material changes in the terms and conditions of the H nonimmigrant's employment or training, as specified in the original approved petition. An amended H–1B petition must be accompanied by a current or new labor condition application certified by the Department of Labor. In the case of amended H–2A or H–2B petitions, the amended petition must be accompanied by the appropriate Department of Labor determination.

(*2*) *H–1B petitions.* An amended H–1B petition shall be filed by the petitioner in all cases where the petitioner is required, under 20 CFR part 655, to obtain a new certification of filing of a labor condition application. An amended H–1B petition must also be filed where there is a change in the beneficiary's duties from one specialty occupation to another specialty occupation. A change in the name of the petitioning entity, standing alone, is not a material change and does not require the filing of an amended petition. As these examples are not all-inclusive, it is the responsibility of the petitioner to determine whether, in a particular case, these exists a material change in the terms and conditions of the H nonimmigrant alien's employment or training necessitating the filing of an amended petition.

(F) *Agents as petitioners.* A United States agent may file a petition in cases involving workers who are traditionally self-employed or workers who use agents to arrange short-term employment on their behalf with numerous employers, and in cases where a foreign employer authorizes the agent to act on its behalf. A United States agent may be: the actual employer of the beneficiary, the representative of both the employer and the beneficiary, or, a person or entity authorized by the employer to act for, or in place of, the employer as its agent. A petition filed by a United States agent must also comply with the provisions of 8 CFR 214.2(h)(2)(i)(B) and is subject to the following conditions:

(*1*) An agent performing the function of an employer, such as where the agent acts as an employment contractor, should provide an itinerary of all definite employment and provide a description of any proposed or possible employment for the period of time covered by the petition. Such an agent need not submit a complete itinerary. A petition filed by such an agent/employer must guarantee the wages and other terms and conditions of employment by contractual agreement with the beneficiary or beneficiaries of the petition.

(*2*) A person or company in business as an agent may file the H petition involving multiple employers as the representative of both the employers and the beneficiary or beneficiaries if the supporting documentation includes a complete itinerary of services or engagements, the agent has fully informed both the employers and the beneficiaries of his or her dual representation, and the agent fully complies with the requirements of 8 CFR part 292. The itinerary shall specify the dates of each service or engagement, the names and addresses of the actual employers, and the names and addresses of the establishments, venues, or locations where the services will be performed. In questionable cases, a contract between the employers and the beneficiary or beneficiaries may be required. The burden is on the agent to explain the terms and conditions of the employment and to provide any required documentation.

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

* * * * *

(4) * * *

(i) * * *

(B) *General requirements for petitions involving a specialty occupation.* (*1*) Before filing a petition for H–1B classification in a specialty occupation, the petitioner should obtain a certification from the Department of Labor that it has filed a labor condition application in the occupational specialty in which the alien(s) will be employed. If the labor condition application is not initially submitted with the petition, the petitioner shall be given an opportunity to obtain a certified labor condition application from the Secretary of Labor and to submit the certified labor condition application to the Service. Under no circumstances, however, may the Service approve the petition prior to submission of a certified labor condition application. The fact that the certification date on the labor condition application may be later than the initial filing date of the petition is not a basis on which to deny the petition.

* * * * *

(iii) * * *

(B) * * *

(*1*) A certification from the Department of Labor that the petitioner has filed a labor condition application with the Secretary of Labor as required under 20 CFR part 655. If the labor condition application is not initially submitted with the petition, the petitioner shall be given an opportunity to obtain a certified labor condition application from the Secretary of Labor and to submit the certified labor condition application to the Service. In all cases, a certified labor condition application must be submitted to the Service before the petition may be adjudicated. The fact that the certification date on the labor condition application may be later than the initial filing date of the petition does not warrant the denial of the petition.

* * * * *

(11) *Revocation of approval of petition* (i) *General.* The director may revoke a petition at any time, even after the expiration of the petition.

(ii) *Automatic revocation.* The approval of any petition is automatically revoked if the petitioner goes out of business, files a written withdrawal of the petition, or notifies the Service pursuant to 8 CFR part 214 that the beneficiary is no longer employed by the petitioner.

(iii) *Revocation on notice.* (A) *Grounds for revocation.* The director shall send to the petitioner a notice of intent to revoke the petition in relevant part if he or she finds that:

(*1*) Other than through notification in paragraph (h)(11)(ii) of this section, the beneficiary is no longer employed by the petitioner in the capacity specified in the petition, or if the beneficiary is no longer receiving training as specified in the petition;

(*2*) The statement of facts contained in the petition was not true and correct;

(*3*) The petitioner violated terms and conditions of the approved petition;

(*4*) The petitioner violated requirements of section 101(a)(15)(H) of the Act or paragraph (h) of this section; or

(*5*) The approval of the petition violated paragraph (h) of this section or involved gross error.

(B) *Notice and decision.* The notice of intent to revoke shall contain a detailed statement of the grounds for the revocation and the time period allowed for the petitioner's rebuttal. The petitioner may submit evidence in rebuttal within 30 days of receipt of the notice. The director shall consider all relevant evidence presented in deciding whether to revoke the petition in whole or in part. If the petition is revoked in part, the remainder of the petition shall remain approved and a revised approval notice shall be sent to the petitioner with the revocation notice.

* * * * *

(15) * * *

(ii) * * *

(A) * * *

(B) *H–1B extension of stay—(1) Alien in a specialty occupation or an alien of distinguished merit and ability in the field of fashion modeling.* An extension of stay may be authorized for a period of up to 3 years for a beneficiary of an H–1B petition in a specialty occupation or an alien of distinguished merit and ability. The alien's total period of stay may not exceed 6 years. The request for an extension must be accompanied by either a new certification from the Department of Labor valid for the extension period requested, or a photocopy of the prior certification from the Department of Labor indicating that the petitioner has on file a labor condition application valid for the period of time requested by the petitioner for the particular occupation. The director may require the petitioner to submit any evidence which in the director's discretion may be necessary to establish that the petitioner has employed the alien pursuant to the terms of the prior petition(s) and labor condition application(s).

* * * * *

Dated: May 29, 1998.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 98–14785 Filed 6–3–98; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM148; Notice No. 25–98–03–SC]

Special Conditions: Boeing Model 777 Series Airplanes; Seats With Articulating Seat Backs

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This notice proposes special conditions for Boeing Model 777 series airplanes. These airplanes will have novel and unusual design features associated with seats with articulating seat backs. The applicable regulations do not contain adequate or appropriate safety standards for this design feature. The proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that provided by the existing airworthiness standards.

DATES: Comments must be received on or before July 20, 1998.

ADDRESSES: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Office of the Regional Counsel, Attn: Rules Docket (ANM–7), Docket No. NM148, 1601 Lind Avenue SW, Renton, Washington, 98055–4506; or delivered in duplicate to the Office of the Regional Counsel at the above address. Comments must be marked: Docket No. NM148. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Jeff Gardlin, Propulsion, Mechanical Systems, and Crashworthiness Branch, ANM–112, Transport Airplane Directorate, Aircraft Certification Service, FAA, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (206) 227–2136; facsimile (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of these special conditions by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. The proposals described in this notice may be changed in light of the comments received. All comments submitted will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Persons wishing the FAA to acknowledge receipt of their comments submitted in response to this request must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. NM148.'' The postcard will be date stamped and returned to the commenter.

Background

On April 15, 1998, the Boeing Company applied for a change to Type Certificate No. T00001SE to include Model 777 series airplanes equipped with seats with articulating seat backs (seats that have a portion of the seat back that moves under inertia loads). Sicma Aero Seat, a Boeing supplier, has designed a seat for installation on a Boeing 777–300 airplane with an articulating seat back that is designed to rotate forward under a prescribed inertial load. The prescribed inertial load is slightly below the 16g test condition of § 25.562. The inertial load causes the seat back mounted video monitor and headrest assembly to partially separate from the seat back and pivot forward. The goal of the design is to reduce the mass of the upper seat back subject to impact, thereby reducing the Head Injury Criteria (HIC) measurement and enhancing passenger safety.

Section 25.562 specifies that dynamic tests must be conducted for each seat type installed in the airplane. The pass/fail criteria for these seats include structural as well as human tolerance criteria. In particular, the regulations require that persons not suffer serious head injury under the conditions specified in the tests, and that a HIC measurement of not more than 1000 units be recorded, should contact with the cabin interior occur. While the test conditions described in this section are specific, it is the intent of the requirement that an adequate level of head injury protection be provided for crash severities up to and including that specified.

The FAA has established guidance, known as ''simplified HIC certification,'' which provides a simplified procedure for demonstrating compliance with the HIC requirements of § 25.562(c)(5). This procedure provides test conditions that meet the intent of the requirements, without causing excessive testing to be performed. The typical seat back has three areas that are considered head strike zones within the +/−10 degree yaw range of impact orientation. The procedure describes two different tests that address these three head strike zones for the majority of cases.

Because § 25.562 and FAA guidance do not adequately address seats with articulating seat backs, the FAA recognizes that appropriate pass/fail

criteria need to be developed that do fully address the safety concerns specific to occupants of these seats.

Type Certification Basis

Under the provisions of 14 CFR § 21.101, Boeing must show that Model 777 airplanes equipped with seats with articulating seat backs comply with the regulations in the U.S. type certification basis established for the Model 777 airplane. The U.S. type certification basis for the Model 777 is established in accordance with 14 CFR §§ 21.29 and 21.17 and the type certification application date. The U.S. type certification basis is listed in Type Certificate Data Sheet No. T00001SE.

If the Administrator finds that the applicable airworthiness regulations (i.e., 14 CFR Part 25 as amended) do not contain adequate or appropriate safety standards for Boeing Model 777 series airplanes because of a novel or unusual design feature, special conditions are prescribed under the provisions of 14 CFR § 21.16 to establish a level of safety equivalent to that established in the regulations.

In addition to the applicable airworthiness regulations and special conditions, the Boeing Model 777 must comply with the fuel vent and exhaust emission requirements of 14 CFR Part 34 and the noise certification requirements of 14 CFR Part 36.

Special conditions, as appropriate, are issued in accordance with 14 CFR § 11.49 after public notice, as required by 14 CFR §§ 11.28 and 11.29(b), and become part of the type certification basis in accordance with 14 CFR § 21.101(b)(2). Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, or should any other model already included on the same type certificate be modified to incorporate the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101(a)(1).

Novel or Unusual Design Features

The Boeing Company is proposing installing seats with articulating seat backs on a Boeing Model 777–300 airplane. The articulating seat back is designed to rotate forward under a prescribed inertial load. The prescribed inertial load is slightly below the 16g test condition specified in § 25.562. The inertial load causes the seat back mounted video monitor and headrest assembly to partially separate from the seat back and pivot forward. The goal of the design is to reduce the mass of the upper seat back subject to impact, thereby reducing the HIC and enhancing passenger safety.

The Federal Aviation Regulations (FAR) state the performance criteria for head injury protection in objective terms. Further guidance in addressing head injury protection for the majority of cases is described in the above mentioned Transport Airplane Directorate memorandum. However, none of these criteria are adequate to address the specific issues raised concerning seats with articulating seat backs. The FAA has therefore determined that, in addition to the requirements of 14 CFR part 25, special conditions are needed to address requirements particular to installation of seats with articulating seat backs.

Accordingly, in addition to the passenger injury criteria specified in 14 CFR §§ 25.562 and 25.785, these special conditions are proposed for the Boeing Model 777 series airplanes equipped with seats with articulating seat backs. Note that HIC, which is addressed in this proposed special condition, does not address occupant injury due to contact with sharp edges or protrusions. Damage to the anthropomorphic test device (ATD) will be used as part of the evaluation of protrusions and sharp edges in demonstrating compliance with § 25.785(b). Other conditions may be developed, as needed, based on further FAA review and discussions with the manufacturer and civil aviation authorities.

Discussion

The seat with the articulating seat back is a new and complex design that warrants additional requirements to ensure an equivalent level of safety to that provided by the regulations. This seat reduces the effective mass that an occupant contacts during a high inertial load, thereby increasing the amount of head injury protection. However, additional considerations are necessary to ensure that the articulating seat back design does not introduce other hazards to occupants. If the articulating seat back fails to break away at the designed inertial load, the seat back may remain rigid, resulting in a significantly higher head injury than allowed for in the regulations. To ensure that the occupant does not contact a rigid seat back, the seat back must break away each time the designed break away inertial load is encountered.

In addition, it is important to evaluate the articulating seat back at lower values than the designed break away inertial load. During a lower inertial load (e.g., 10g), the occupant may contact the seat. Since the seat will not break away prior to the occupant contacting the seat during this lower inertial load, the occupant may receive a more severe head injury than during an event occurring at the designed break away inertial load. The intent of the regulations is that the occupant is protected from head injury for crash severities up to and including that specified.

When the articulating seat back breaks away, the video monitor pivots and moves forward, leaving a rectangular opening in the seat back. This opening could pose an entrapment hazard to the person seated behind the seat. During any testing for certification, the head must not become entrapped. In addition, the head must not become entrapped in any other foreseeable operating conditions for the range of occupants.

The articulating seat back may have protrusions and/or recessed areas (i.e., bottom lip of the seat back opening) that pose a head injury hazard to the occupant during emergency conditions. As stated in § 25.562(c)(5), the head impact for a seat occupant cannot exceed a HIC of 1,000 units. The ''simplified HIC certification'' procedure is commonly used to demonstrate compliance with § 25.562(c)(5). Due to the non-standard articulating seat back configuration, the ''simplified HIC certification'' procedure alone may not be sufficient for demonstrating compliance with § 25.562(c)(5). The ATD must come in contact with these protrusions or recessed areas of the seat back opening during testing. If the ATD does not contact these areas using the ''simplified HIC certification'' procedure, additional testing will be required to demonstrate compliance with § 25.562(c)(5).

The first delivery of a Model 777–300 airplane with these additional novel or unusual design features is currently scheduled for October of 1998, with the certification program scheduled to begin in May. Because a delay would significantly affect the applicant's testing, installation, and type certification of these seats, the public comment period is 30 days.

Applicability

As discussed above, these special conditions are applicable to the Model 777 series airplanes. Should Boeing apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, the special conditions would apply to that model as well under the provisions of 14 CFR § 21.101(a)(1).

Conclusion

This action affects only certain novel or unusual design features on the Boeing Model 777 series airplanes. It is not a rule of general applicability, and it affects only the manufacturer who applied to the FAA for approval of these features on the airplane.

List of subjects in 14 CFR Part 25

Air transportation, Aircraft, Aviation safety, Safety.

The authority citation for these proposed special conditions is as follows:

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

The Proposed Special Conditions

Accordingly, the Federal Aviation Administration proposes the following special conditions as part of the type certification basis for the Boeing Model 777 series airplanes equipped with seats with articulating seat backs:

1. The articulating seat back must reliably break away at the designed inertial load.
2. The seat must provide an equivalent level of head injury protection under the maximum inertia loading conditions under which the articulating seat back will not break away. The HIC value must not exceed 1,000 units at any time prior to break away.
3. The head must not become entrapped in the seat back opening created by the articulating seat back, during any testing conducted to demonstrate compliance with §§ 25.562 and 25.785(b), and these special conditions. The head must also not become entrapped in the seat back opening during any other foreseeable operating or crash conditions.
4. The HIC must not exceed 1,000 units for any obvious protrusions or recessed areas of the seat back opening (i.e., bottom lip of the seat back opening). The anthropomorphic test device (ATD) must come in contact with these protrusions or recessed areas of the seat back opening.
5. It must be shown that the additional breakaway features of the articulating seat back do not pose an entrapment hazard to the occupant of a seat having these features and impacted from the rear.

Issued in Renton, Washington, on May 27, 1998.

John J. Hickey,

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

[FR Doc. 98–14882 Filed 6–3–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–118–AD]

RIN 2120–AA64

Airworthiness Directives; Aerospatiale Model ATR72 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Aerospatiale Model ATR72 series airplanes. This proposal would require a one-time inspection of certain anchor nuts located on the upper surface of the wings to detect damage, and replacement of the anchor nuts with new or serviceable nuts, if necessary. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent failure of anchor nuts on the upper surface of the wings, which could result in reduced structural integrity of the airplane.

DATES: Comments must be received by July 6, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–118–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 98–NM–118–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–118–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Aerospatiale Model ATR72 series airplanes. The DGAC advises that certain anchor nuts located on the upper skin panel of the wings were found to have failed. This failure has been attributed to quality defects during manufacture of a batch of the anchor nuts, which may cause the nuts to rupture after the tightening of corresponding screws. Such failures, if not corrected, could result in reduced structural integrity of the airplane.

Explanation of Relevant Service Information

The manufacturer has issued Avions de Transport Regional Service Bulletin ATR72–57–1019, dated July 7, 1997, which describes procedures for a one-time inspection of certain anchor nuts located on the upper surface of the

wings to detect damage, and replacement of any damaged nuts with new or serviceable nuts. Accomplishment of the action specified in the service bulletin is intended to adequately address the identified unsafe condition. The DGAC classified this service bulletin as mandatory and issued French airworthiness directive 97–264–034(B), dated September 24, 1997, in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously, except as discussed below.

Differences Between Proposed Rule and Service Bulletin

Operators should note that, although the service bulletin specifies that the manufacturer may be contacted for disposition of certain repair conditions, this proposal would require the repair of those conditions to be accomplished in accordance with a method approved by either the FAA or the DGAC (or its delegated agent). In light of the type of repair that would be required to address the identified unsafe condition, and in consonance with existing bilateral airworthiness agreements, the FAA has determined that, for this proposed AD, a repair approved by either the FAA or the DGAC would be acceptable for compliance with this proposed AD.

Cost Impact

The FAA estimates that 39 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 8 work hours per airplane to accomplish the proposed inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspection proposed by this AD on U.S. operators is estimated to be $18,720, or $480 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Aerospatiale: Docket 98–NM–118–AD.

Applicability: Model ATR72–102, –201, –202, and –212 series airplanes, as listed in Avions de Transport Regional Service Bulletin ATR72–57–1019, dated July 7, 1997; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (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 failure of anchor nuts on the upper surface of the wings, which could result in reduced structural integrity of the airplane, accomplish the following:

(a) Within 6 months after the effective date of this AD, inspect the anchor nuts having part number (P/N) NAS1473A5 located on the upper surface of the wing to detect damage, in accordance with Avions de Transport Regional Service Bulletin ATR72–57–1019, dated July 7, 1997.

(1) If no damage is detected, no further action is required by this AD.

(2) If any damage is detected, and the damage is within the allowable limits specified in the Accomplishment Instructions of the service bulletin, prior to the accumulation of an additional 4,000 flight cycles following the inspection, replace the damaged nut having P/N NAS1473A5 with a new or serviceable nut, in accordance with the Accomplishment Instructions of the service bulletin.

(3) If any damage is detected, and the damage is outside the allowable limits specified in the Accomplishment Instructions of the service bulletin, prior to further flight, repair in accordance with a method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, or the Direction Générale de l'Aviation Civile (or its delegated agent).

(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, International Branch, ANM–116. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of

compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

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

Note 3: The subject of this AD is addressed in French airworthiness directive 97–264–034(B), dated September 24, 1997.

Issued in Renton, Washington, on May 28, 1998.

John J. Hickey,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–14791 Filed 6–3–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AWA–1]

RIN 2120–AA66

Proposed Revision of the Legal Description of the Memphis Class B Airspace Area; Tennessee

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to revise the legal description of the Memphis Class B airspace area by changing the point of origin of the airspace area from the Memphis Very High Frequency Omnidirectional Range/Tactical Air Navigation (VORTAC) navigational aid to a geographical point in space. The FAA is taking this action due to the relocation of the Memphis VORTAC. This proposed action will not change the actual dimensions, configuration, or operating requirements of the Memphis Class B airspace area. The effective date of this rulemaking action would coincide with the relocation of the Memphis VORTAC.

DATE: Comments must be received on or before July 6, 1998.

ADDRESS: Send comments on the proposal in triplicate to the Federal Aviation Administration, Office of Chief Counsel, Attention: Rules Docket, AGC–200, Airspace Docket No. 98–AWA–1, 800 Independence Avenue, SW, Washington DC 20591. Comments may also be sent electronically to the following Internet address: nprmcmts@mail.hq.faa.gov. The official docket may be examined in the Rules Docket, Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

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

SUPPLEMENTARY INFORMATION:

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 should 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. 98–AWA–1,'' 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 both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will also be filed in the docket.

Availability of NPRM's

An electronic copy of this document may be downloaded using a modem and suitable communications software from the FAA regulations section of the Fedworld electronic bulletin board service (telephone: 703–321–3339) or the **Federal Register**'s electronic bulletin board service (telephone: 202–512–1661).

Internet users may reach the FAA's web page at http://www.faa.gov or the **Federal Register**'s webpage at http://www.access.gpo.gov/su—docs for access to recently published rulemaking documents.

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should call the FAA's Office of Rulemaking, (202) 267–9677 for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, that describes the application procedure.

Background

Due to on-airport expansion, the Memphis VORTAC will be relocated approximately 2.85 miles south of its current position. This relocation will affect the current Memphis Class B airspace area description. Due to this relocation, the FAA is proposing to redefine the legal description of the Memphis Class B airspace area with reference to a ''point in space,'' which is the current geographic location of the Memphis VORTAC, as the point of origin.

The Proposal

The FAA proposes to amend 14 CFR part 71 (part 71) by revising the legal description of the Memphis Class B airspace area. The current legal description for the Memphis Class B airspace area utilizes the Memphis VORTAC as the point of origin. The Memphis VORTAC will be relocated 2.85 nautical miles south of its current location. Due to the relocation of this navigational aid, the FAA proposes to revise the legal description of the Memphis Class B airspace area by changing the point of origin from the Memphis VORTAC to a point in space geographical position. The geographical point of origin that will be used as part of the proposed legal description will be the old location of the navigational aid. This proposed action is a technical amendment to the legal description and would not change the actual dimensions, configuration, and operating requirements of the Memphis Class B airspace area.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally

current. Therefore, this regulation: (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The coordinates for this airspace docket are based on North American Datum 83. Class B airspace areas are published in paragraph 3000 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class B airspace area listed in this document will be published subsequently in the Order.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

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 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 3000—Subpart B-Class B Airspace

* * * * *

ASO TN B Memphis, TN [Revised]

Memphis International Airport (Primary Airport)
(lat. 35°02′51″ N., long. 89°58′43″ W.)
Point of Origin
(lat. 35°03′46″ N., long. 89°58′54″ W.)

Boundaries

Area A. That airspace extending upward from the surface to and including 10,000 feet MSL within a 7-mile arc of the Point of Origin extending clockwise from the 075° bearing from the Point of Origin to the 275° bearing from the Point of Origin and within a 5-mile arc of the Point of Origin extending clockwise from the 275° bearing from the Point of Origin to the 075° bearing from the Point of Origin.

Area B. That airspace extending upward from 1,800 feet MSL to and including 10,000 feet MSL within the area bounded by a line beginning at the 037° bearing 13-mile position from the Point of Origin; thence southward to the 052° bearing 10-mile position from the Point of Origin; then clockwise on the 10-mile arc until intercepting the 126° bearing from the Point of Origin; then extending southward until intercepting the 147° bearing 15-mile position from the Point of Origin; thence clockwise on the 15-mile arc until intercepting the 211° bearing from the Point of Origin; thence northward until intercepting the 226° bearing 11-mile position from the Point of Origin; thence clockwise on the 11-mile arc until intercepting the 312° bearing from the Point of Origin; thence northbound until intercepting the 321° bearing 13-mile arc from the Point of Origin; thence clockwise on the 13-mile arc to the point of beginning and excluding that airspace within Area A.

Area C. That airspace extending upward from 3,000 feet MSL to and including 10,000 feet MSL within a 20-mile radius of the Point of Origin and excluding that airspace within Areas A and B.

Area D. That airspace extending upward from 5,000 feet MSL to and including 10,000 feet MSL within a 30-mile radius of the Point of Origin, excluding that airspace northwest of a line from the 295° bearing 30-mile position from the Point of Origin to the 352° bearing 30-mile position from the Point of Origin, excluding that airspace southeast of a line from the 114° bearing 30-mile position from the Point of Origin to the 157° bearing 30-mile position from the Point of Origin and excluding that airspace within Areas A, B, and C.

* * * * *

Issued in Washington, DC, on May 28, 1998.

John S. Walker,

Program Director for Air Traffic Airspace Management.

[FR Doc. 98–14880 Filed 6–3–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AEA–10]

Proposed Amendment to Class E Airspace; Dunkirk, NY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the Class E airspace area at Dunkirk, NY. The development of a new Standard Instrument Approach Procedure (SIAP) based on the Global Positioning System (GPS) at Angola Airport, NY, has made this proposal necessary. Additional controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate the SIAP and for Instrument Flight Rules (IFR) operations at the airport.

DATES: Comments must be received on or before July 6, 1998.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace Branch, AEA–520, Docket No. 98–AEA–10, F.A.A. Eastern Region, Federal Building # 111, John F. Kennedy Int'l Airport, Jamaica, NY 11430.

The official docket may be examined in the Office of the Regional Counsel, AEA–7, F.A.A. Eastern Region, Federal Building # 111, John F. Kennedy International Airport, Jamaica, New York 11430.

An informal docket may also be examined during normal business hours in the Airspace Branch, AEA–520, F.A.A. Eastern Region, Federal Building # 111, John F. Kennedy International Airport, Jamaica, NY 11430.

FOR FURTHER INFORMATION CONTACT: Mr. Francis T. Jordan, Jr., Airspace Specialist, Airspace Branch, AEA–520 F.A.A. Eastern Region, Federal Building # 111, John F. Kennedy International Airport, Jamaica, New York 11430; telephone (718) 553–4521.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipts 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. 98–AEA–10.'' The postcard will be date/time stamped and returned to the commenter. All communications

received on or before the closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be change in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with the FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Office of the Regional Counsel, AEA–7, F.A.A. Eastern Region, Federal Building # 111, John F. Kennedy International Airport, Jamaica, NY 11430. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A, which described the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to amend the Class E airspace area at Dunkirk, NY. A GPS RWY 1 SIAP has been developed for the Angola Airport. Additional controlled airspace extending upward from 700 feet AGL is needed to accommodate the SIAP and for IFR operations at the airport. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface are published in Paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In considered of the foregoing, the Federal Aviation Administration proposes to amend 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 Federal Aviation Administration Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, is proposed to be amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AEA NY E5 Dunkirk, NY [Revised]

Chautauqua County/Dunkirk Airport, NY
(lat. 42°29′36″N., long. 79°16′19″W.)
Angola Airport, NY
(lat. 42°39′37″N., long. 78°59′28″W.)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of Chautauqua County/Dunkirk Airport and within an 11.8-mile radius of the airport extending clockwise from a 022° to a 264° bearing from the airport and within a 6.3-mile radius of the Angola Airport and within 4 miles each side of the 359° bearing from the airport extending from the 6.3-mile radius to 10.5 miles south of the airport.

* * * * *

Issued in Jamaica, New York, on May 27, 1998.

Franklin D. Hatfield,

Manager, Air Traffic Division, Eastern Region.

[FR Doc. 98–14887 Filed 6–3–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF JUSTICE

28 CFR Part 16

[AAG/A Order No. 152–98]

Exemption of System of Records Under the Privacy Act

AGENCY: Department of Justice.

ACTION: Proposed rule.

SUMMARY: The Department of Justice, Federal Bureau of Investigation, proposes to exempt the National Instant Criminal Background Check System (NICS) from 5 U.S.C. 552a(c)(3) and (4); (d); (e)(1), (2), and (3); (e)(4)(G) and (H); (e)(5) and (8); and (g). The purpose of the proposed rule is to exempt the NICS from certain requirements of the Privacy Act for the reasons specified below. The exemptions are necessary because some information in NICS is from law enforcement records. Therefore, to the extent that they may be subject to exemption under subsections (j)(2), (k)(2), and (k)(3), these records are not available under the Privacy Act and not subject to certain of its procedures such as obtaining an accounting of disclosures, notification, access, or amendment/correction.

DATES: Comments must be submitted on or before July 6, 1998.

ADDRESSES: All comments should be submitted to Patricia E. Neely, Program Analyst, Information Management and Security Staff, Justice Management Division, Department of Justice, Washington, DC 20530 (Room 850, WCTR Building).

FOR FURTHER INFORMATION CONTACT: Patricia E. Neely, (202) 616–0178.

SUPPLEMENTARY INFORMATION: In the notice section of today's **Federal Register**, the Department of Justice provides a description of the ''National Instant Criminal Background Check System (NICS), JUSTICE/FBI–018.'' Also in the rules section of today's **Federal Register**, the Department of Justice provides proposed rules to establish policies and procedures for operating the system, ensuring the privacy and security of the NICS, and implementing its alternative access and appeal provisions.

This order relates to individuals rather than small business entities. Nevertheless, pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601–612, it is hereby stated that this order will not have ''a significant economic impact on a substantial number of small entities.''

List of Subjects in 28 CFR Part 16

Administrative Practices and Procedures, Courts, Freedom of Information Act, Government in the Sunshine Act, and the Privacy Act.

Dated: May 7, 1998.

Stephen R. Colgate,

Assistant Attorney General for Administration.

Pursuant to the authority vested in the Attorney General by 5 U.S.C. 552a and delegated to me by Attorney General Order 793–78, it is proposed to revise 28 CFR part 16, as set forth below.

PART 16—[AMENDED]

1. The authority for part 16 continues to read as follows:

Authority: 5. U.S.C. 301, 552, 552a, 552b(g), 553; 18 U.S.C. 4203 (a)(1); 28 U.S.C. 509, 510, 534; 31 U.S.C. 3717, 9701.

2. It is proposed that 28 CFR 16.96 be amended by adding paragraphs (p) and (q) to read as follows:

§ 16.96 Exemption of Federal Bureau of Investigation (FBI) Systems—limited access.

* * * * *

(p) The National Instant Criminal Background Check System (NICS), (JUSTICE/FBI–018), a Privacy Act system of records, is exempt:

(1) Pursuant to 5 U.S.C. 552a(j)(2), from subsections (c) (3) and (4); (d); (e) (1), (2), (3); (e)(4) (G) and (H); (e) (5) and (8); and (g); and

(2) Pursuant to 5 U.S.C. 552a(k) (2) and (3), from subsections (c) (3), (d), (e) (1), and (e)(4) (G) and (H).

(q) These exemptions apply only to the extent that information in the system is subject to exemption pursuant to 5 U.S.C. 552a(j)(2), (k)(2), and (k)(3). Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3) because the release of the accounting of disclosures would place the subject on notice that the subject is or has been the subject of investigation and result in a serious impediment to law enforcement.

(2) From subsection (c)(4) to the extent that it is not applicable since an exemption is claimed from subsection (d).

(3)(i) From subsection (d) and (e)(4) (G) and (H) because these provisions concern an individual's access to records which concern the individual and such access to records in the system would compromise ongoing investigations, reveal investigatory techniques and confidential informants, invade the privacy of persons who provide information in connection with a particular investigation, or constitute a potential danger to the health or safety of law enforcement personnel.

(ii) In addition, from subsection (d)(2) because, to require the FBI to amend information thought to be not accurate, timely, relevant, and complete, because of the nature of the information collected and the essential length of time it is maintained, would create an impossible administrative burden by forcing the agency to continuously retrograde its investigations attempting to resolve these issues.

(iii) Although the Attorney General is exempting this system from subsection (d) and (e)(4) (G) and (H), an alternate method of access and correction has been provided in 28 CFR, part 25, subpart A.

(4) From subsection (e)(1) because it is impossible to state with any degree of certainty that all information in these records is relevant to accomplish a purpose of the FBI, even though acquisition of the records from state and local law enforcement agencies is based on a statutory requirement. In view of the number of records in the system, it is impossible to review them for relevancy.

(5) From subsections (e) (2) and (3) because the purpose of the system is to verify information about an individual. It would not be realistic to rely on information provided by the individual. In addition, much of the information contained in or checked by this system from Federal, State, and local criminal history records.

(6) From subsection (e)(5) because it is impossible to predict when it will be necessary to use the information in the system, and, accordingly, it is not possible to determine in advance when the records will be timely. Since most of the records are from State and local or other Federal agency records, it would be impossible to review all of them to verify that they are accurate. In addition, no alternate procedure is being established in 28 CFR, part 25, subpart A, so the records can be amended if found to be incorrect.

(7) From subsection (e)(8) because the notice requirement could present a serious impediment to law enforcement by revealing investigative techniques and confidential investigations.

(8) From subsection (g) to the extent that, pursuant to subsections (j)(2), (k)(2), and (k)(3), the system is exempted from the other subsections listed in paragraph (p) of this section.

[FR Doc. 98–14796 Filed 6–3–98; 8:45 am]

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DEPARTMENT OF JUSTICE

28 CFR Part 25

[AG Order No. 2158–98]

RIN 1105–AA51

National Instant Criminal Background Check System Regulations

AGENCY: Department of Justice.

ACTION: Proposed rule.

SUMMARY: The United States Department of Justice is publishing a proposed rule for the National Instant Criminal Background Check System (NICS) to establish policies and procedures for ensuring the privacy and security of this system and to implement a NICS appeals policy for persons who have been denied the purchase of a firearm because of information in the NICS they believe to be erroneous or incorrect. Specifically, this rule will detail policies for validating NICS data, storing, accessing, and querying records in the system, retaining and destroying NICS information, and correcting erroneous data in the system.

DATES: Written comments must be received on or before September 2, 1998.

ADDRESSES: All comments concerning this proposed rule should be mailed to: Mr. Emmet A. Rathbun, NICS Project Manager, Federal Bureau of Investigation, CJIS Division, Module C–3, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306–0147.

FOR FURTHER INFORMATION CONTACT: Mr. Emmet A. Rathbun, NICS Project Manager, telephone number (304) 625–2000.

SUPPLEMENTARY INFORMATION: On November 30, 1993, Pub. L. 103–159 (107 Stat. 1536) was enacted, amending the Gun Control Act of 1968 (GCA), as amended (18 U.S.C Chapter 44). Title I of Pub. L. 103–159, the ''Brady Handgun Violence Prevention Act'' (''Brady Act''), requires the Attorney General to establish by November 30, 1998, ''a national instant criminal background check system that any [firearms] licensee may contact, by telephone or by other electronic means in addition to the telephone, for information, to be supplied immediately, on whether receipt of a firearm by a prospective transferee would violate section 922 of title 18, United States Code, or State law.'' To implement the NICS, the Brady Act authorizes the development of hardware and software systems to link State criminal history check systems into the national system. It also authorizes the Attorney General to obtain official information from any Federal Department or agency on persons for whom receipt of a firearm would be in violation of the law.

The Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury, issued proposed regulations, 63 FR 8379 (Feb. 19, 1998), Notice Number 857, ''Implementation of Pub. L. 53–159, Relating to the Permanent Provisions of the Brady Handgun Violence Prevention Act,'' which specify how Federal firearms licensees (FFLs) shall interact with the NICS. In general, the proposed ATF regulations: Specify the time when an FFL must contact the NICS; detail the criteria that

must be met in order for a firearm permit to operate as an exception to the requirement of a NICS background check, including the requirement that state officials issuing such permits conduct a NICS check on all applicants for permits issued on or after November 30, 1998; note the applicability of the requirement of a NICS background check to pawned firearm transactions; require the Director of ATF to contact the NICS before approving a firearm transfer under the National Firearms Act; amend the ATF firearms transaction record, Form 4473, to allow FFLs to solicit additional optional information about the purchaser for submission with a NICS background check request in order to help avoid cases of misidentification by the system; and require FFLs to record on Form 4473 all responses received from the NICS and to maintain a copy of each Form 4473 for which a NICS transaction number (a unique identification number assigned to each NICS check) has been received, regardless of whether the transfer of the firearm was completed.

Prohibited Persons

Section 922 of title 18 prohibits certain persons from shipping or transporting any firearm in interstate or foreign commerce, or receiving any firearm that has been shipped or transported in interstate or foreign commerce, or possessing any firearm in or affecting commerce. These prohibitions apply to any person who:

(1) Is under indictment for or has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year;

(2) Is a fugitive from justice;

(3) Is an unlawful user of or addicted to any controlled substance;

(4) Has been adjudicated as a mental defective or committed to a mental institution;

(5) Is an alien illegally or unlawfully in the United States;

(6) Has been discharged from the Armed Forces under dishonorable conditions;

(7) Having been a citizen of the United States, has renounced U.S. citizenship;

(8) Is subject to a court order that restrains the person from harassing, stalking, or threatening an intimate partner or child of such intimate partner; or

(9) Has been convicted in any court of a misdemeanor crime of domestic violence.

The ATF published a final rule concerning ''Definitions for the Categories of Persons Prohibited From Receiving Firearms'' in the **Federal Register** on June 27, 1997 (T.D. ATF–391, 62 FR 34634). These definitions became effective August 26, 1997, and shall apply to the operation and use of the NICS.

Department of Justice Action

The Federal Bureau of Investigation (FBI), as directed by the Attorney General, has coordinated the development efforts of the NICS since 1994. The FBI is negotiating formal Memoranda of Understanding (MOUs) between the FBI and Federal agencies that will supply data to the NICS. The MOUs outline procedures for supplying data to the NICS and define limits on the appropriate use of the data.

This proposed rule may directly impact the following groups: prospective firearms purchasers, Federal firearms licensees (FFLs), state and local law enforcement agencies, and certain Federal agencies.

Brady Act Task Group

Immediately after the Brady Act went into effect on February 28, 1994, the FBI established a Brady Act Task Group (BATG) composed of experienced state and local law enforcement officials. The FBI has worked closely with the BATG, whose purpose has been to assist in the development and finalization of requirements for implementing the NICS.

The System

In order to establish the NICS in a way that incorporates relevant information for the various categories of prohibited persons previously mentioned, the FBI has created a new database called the ''NICS Index'' with information concerning individuals who fall within categories 3 through 7 of the prohibited persons described above. A NICS background check will check this new database and also existing systems of records operated by the FBI, such as the National Crime Information Center (NCIC), and the Interstate Identification Index (III).

The NICS Index will contain (1) records provided by Federal agencies to the FBI on persons prohibited from receiving firearms under Federal law and (2) records provided voluntarily by some states on persons who have been denied the purchase of a firearm or who are known to be disqualified from possessing a firearm under Federal law. Information in the NICS Index will be provided to the FBI on magnetic tape media or through electronic access by Federal agencies and authorized state or local law enforcement agencies. Access to the NICS Index will generally be restricted to purposes related to NICS background checks pursuant to the Brady Act; other access shall be limited to uses for the purpose of (1) providing information to Federal, state, or local criminal justice agencies in connection with the issuance of a permit or license to possess, acquire, conceal, or transfer a firearm or (2) responding to an inquiry from the ATF in connection with a civil or criminal law enforcement activity relating to the Gun Control Act (18 U.S.C. Chapter 44).

In states where they agree to do so, state or local law enforcement agencies will serve as Points of Contact (POCs) for the NICS. As POCs, these agencies will receive inquiries by FFLs, initiate NICS background checks through electronic access to the NICS via the NCIC communications network, receive and review any matching records retrieved by the system, check state and local record systems (including criminal justice databases) for disqualifying records, determine whether any of the matching records provide reason to believe that the individual is disqualified from possessing a firearm, and provide responses back to the FFL. States may also exchange messages regarding long-gun purchases made outside of a purchaser's state of residence. The FBI will not charge FFLs a fee for NICS background checks processed by state POCs.

In states where there is no POC, FFLs will contact the NICS Operations Center, a unit run by the FBI, either by telephone or through electronic dial-up access, to request a NICS background check. In these non-POC states, the NICS Operations Center will perform the NICS background check, analyze any matching records, and provide a response back to the FFL. The FBI will charge FFLs in non-POC states a fee for NICS background checks processed by the NICS Operations Center.

Background Checks

A NICS background check will consist of a search using name, sex, race, date of birth, state of residence, and other identifying information provided by a purchaser for records in the NICS Index, NCIC, and III. In states where state or local law enforcement agencies act as POCs, the POCs may also check state or local record systems. For each background check, the NICS will consolidate matching records from the NICS Index, NCIC and III. In cases where the checks are performed by state or local POCs, an authorized state or local official will receive and evaluate matching records forwarded by the FBI and any available state records and will determine whether the prospective purchaser is the subject of the matching

records and whether the records provide reason to believe that the prospective purchaser is ineligible to receive a firearm under state or Federal law. In states where FFLs contact the FBI directly, an FBI analyst will make these determinations. In either case, only the decision whether or not the transfer may proceed (communicated in the form of a message stating ''proceed,'' ''delayed,'' or ''denied''), and none of the underlying information, will be provided to the FFL.

Retention and Destruction of Records in the NICS

The FBI will retain indefinitely records in the NICS Index that prohibit persons from receiving or possessing a firearm unless such records are updated or canceled by the agency that supplied the records to the NICS Index. In cases where the firearms disability is temporary in nature, the NICS Index will automatically purge the record on the date of its expiration or when it is no longer disabling.

The FBI will maintain an automated Audit Log of all transactions that pass through the NICS. Transactions relating to firearm transfer approvals in the Audit Log will be maintained for eighteen months. After this time, information contained in the Audit Log related to the person or the transfer will be destroyed; only the NICS Transaction Number (NTN), a unique number assigned to each valid background check inquiry received by the NICS, and the date on which the NTN was assigned, will be retained. This temporary retention of information will assist the FBI and state and local officials in auditing and/or investigating unauthorized use of the NICS. The FBI will retain a log of all transactions relating to firearm transfer denials for 10 years, after which time the records will be transferred to a Federal Records Center for retention.

System Security

This regulation requires the state and local law enforcement agencies using the system to identify themselves before obtaining access to the NICS through the use of an Originating Agency Identifier (ORI) assigned by the FBI. The Control Terminal Agency (CTA) in each state, typically the state police or department of public safety, will be responsible for providing to the FBI a list of agencies authorized in the state to serve as a POC for the NICS and for ensuring that unauthorized agencies cannot access the system. In addition, the NICS will individually identify and authenticate FBI personnel who access the system. The NICS will also require the use of FBI-assigned ORIs by authorized Federal agency employees who in the future may be provided message-based access to the NICS Index via the NCIC communications network for purposes of adding, updating, and canceling records.

To ensure the proper level of access for each transaction, an agency must include its ORI in each message it sends to the NICS. Agencies providing records to the NICS must include their ORI and a unique agency record identifier (ARI) in each record provided. The system will allow authorized Federal and state agencies to add data to the NICS Index and to update or cancel only the data that they have provided.

The NICS will authenticate electronic connections by all users to prevent unauthorized access to the system. The FBI will provide to NICS users ''NICS Security Guidelines'' which will detail their security roles and responsibilities.

Personnel Security

Federal agencies and state and local law enforcement agencies acting as POCs will be responsible for ensuring that their personnel who process and handle data for the NICS comply with the NICS Security Guidelines, the NCIC Security Policy of 1992, applicable Federal laws, such as the Privacy Act of 1974 and the Computer Security Act of 1987, and with their own policies and procedures for protecting information. In addition, if the NICS allows a Federal agency direct terminal access to the NICS for the purpose of adding, updating, or canceling records, the agency, at a minimum, must ensure that terminal operators follow the NCIC Security Policy.

Physical Security

Federal agencies and state and local law enforcement agencies that contribute information to the NICS Index will label any magnetic media used to transport NICS data. These labels will identify the agency supplying the data and the sensitivity of the data. The FBI will store NICS data only in areas that are physically safe from access by unauthorized persons or exposure to environmental hazards.

If an agency communicates electronically with the NICS via the NCIC communications network, the computer site and/or terminal area used by the agency must have adequate physical security to protect against unauthorized personnel gaining access to the computer equipment or to any of the stored data, as discussed in the NCIC Security Policy. Visitors in the area of the computer site and/or terminal must be accompanied by staff personnel at all times, and access to the terminal area is restricted to the minimum number of authorized employees needed to complete the work.

Authority To Obtain Records From Federal Agencies

Section 103(e)(1) of the Brady Act states that ''[n]otwithstanding any other law, the Attorney General may secure directly from any department or agency of the United States such information on persons for whom receipt of a firearm would violate subsection (g) or (n) of section 922 of title 18, United States Code or State law, as is necessary to enable the system to operate in accordance with this section. On request of the Attorney General, the head of such department or agency shall furnish such information to the system.''

Privacy Act Notice and Rule

Pursuant to the Privacy Act of 1974, a Privacy Act Notice describing the system of records and exempting its records from certain provisions of the Privacy Act is published elsewhere in today's **Federal Register**.

User Fee Charge

FFLs who contact the NICS Operations Center by telephone or by electronic means to initiate a background check will be assessed a fee. The user fee will be published separately in the **Federal Register**.

Appeal From a Denial and the Correction of Erroneous System Information

If, as a result of a NICS background check, an individual is unable to purchase a firearm, the individual may request the reason(s) for the denial from the agency that made the determination (either the FBI or the POC). The denying agency (either the FBI or the POC) shall respond with the reasons for the denial within five business days of receipt of the request. The individual may challenge the accuracy of the record by appealing to the state or local POC that denied the transfer, the agency that originated the record, or the FBI. If a record is found to be erroneous, the data in the NICS shall be corrected and the individual will be provided a written confirmation of the correction of erroneous data to present to the FFL. If more than 30 days have transpired since the initial check, the FFL will recheck the NICS without a fee before allowing the sale to continue. The Brady Act also provides that an individual may contest the accuracy or validity of a disqualifying record by bringing ''an action against the State or political

subdivision responsible for providing the erroneous information, or responsible for denying the transfer, or against the United States, as the case may be, for an order directing that the erroneous information be corrected or that the transfer be approved, as the case may be.''

Applicable Administrative Procedures and Executive Orders

Regulatory Flexibility Analysis

The Attorney General, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and by approving it certifies that this regulation will not have a significant economic impact on a substantial number of small entities. A Brady Act Task Group, composed of experienced state and local law enforcement officials, provided input on the design of the NICS. When developing the guidelines for the NICS, both the Task Group and the FBI took into account the fact that many FFLs are small businesses. The obligation of FFLs to contact the NICS before transferring a firearm is imposed by the Brady Act and is detailed in the above-described proposed ATF regulations implementing the permanent provisions of the Brady Act. In designing the NICS, the FBI has sought to avoid burdens on small entities beyond those requirements needed to conduct the statutorily prescribed background checks effectively and to ensure the privacy and security of the information in the NICS. The FBI is not aware of any relevant Federal rules that duplicate, overlap, or conflict with this rule.

Executive Order 12866

This proposed rule has been drafted and reviewed in accordance with Executive Order 12866, section 1(b), Principles of Regulation. The Department of Justice has determined that this proposed rule is a ''significant regulatory action'' under Executive Order 12866, section 3(f), Regulatory Planning and Review, and thus it has been reviewed by the Office of Management and Budget (OMB).

Executive Order 12612

This rule will not have a substantial direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federal Assessment.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 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 proposed rule is not a major rule as defined by Section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This proposed rule will not result in an annual effect on the economy of $100,000,000 or more, a major increase in costs or prices, or have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Paperwork Reduction Act of 1995

The collection of information contained in this notice of proposed rulemaking has been submitted to the OMB for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the Office of Management and Budget, Attention: Desk Officer of the Department of Justice, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530. Comments are specifically requested concerning:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the Department of Justice and the FBI, including whether the information will have practical utility;

(2) The accuracy of the estimated burden associated with the proposed collection of information (see below);

(3) How the quality, utility, and clarity of the information to be collected may be enhanced; and

(4) How the burden of complying with the proposed collection of information may be minimized, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

The collection of information in this proposed regulation is for the purpose of establishing the NICS, a national background check system that FFLs are required by the Brady Act to contact for information about whether the transfer of a firearm to a prospective purchaser would violate Federal or state law. A database called the NICS Index is being created which will contain information about individuals who fall into the non-criminal categories of persons who are disqualified from possessing a firearm under Federal law. Some states may voluntarily submit information to the FBI concerning certain individuals who fall into one or more of these categories, such as persons who have been adjudicated as mental defectives or who have been committed to mental institutions, for input into the NICS Index. This data may be submitted by such states on a magnetic tape medium, which the FBI will download into the NICS Index. The FBI will also allow such states to make individual record submissions via the NCIC communications network. It is estimated that, at the outset, five states will voluntarily contribute such data to the NICS Index. Additional states may contribute data in the future. It is estimated that it will require 24 hours for each contributing state to write the specifications and program for the magnetic tapes that will be submitted to the FBI. Thereafter, it is estimated that it will require one hour to place data on the tape each time it is submitted to the FBI. Tape submissions will be made approximately once per month; electronic submissions may be made at the state's convenience. Thus, it is estimated that, in the first year in which it makes data submissions to the NICS Index, a contributing state will spend up to 36 hours in making its submissions. In succeeding years, it is estimated that each submitting state will spend up to 12 hours per year in making submissions. The total public burden (in hours) associated with the collection from the estimated five initial respondents, therefore, is 180 hours in the first year and 60 hours each succeeding year.

List of Subjects in 28 CFR Part 25

Administrative practice and procedure, Automatic data processing, Business and industry, Courts, Firearms, Information, Law enforcement officers, Reporting and recordkeeping requirements, and Telecommunications.

Accordingly, Title 28 of the Code of Federal Regulations is proposed to be amended by adding the following new part 25:

PART 25—DEPARTMENT OF JUSTICE INFORMATION SYSTEMS

Subpart A—The National Instant Criminal Background Check System

Sec.
25.1 Purpose and authority.
25.2 Definitions.
25.3 System information.
25.4 Record source categories.
25.5 Validation and data integrity of records in the system.
25.6 Accessing records in the system.
25.7 Querying records in the system.
25.8 System safeguards.
25.9 Retention and destruction of records in the system.
25.10 Correction of erroneous system information.
25.11 Prohibited activities and penalties.

Authority: Pub. L. 103–159, 107 Stat. 1536.

Subpart A—The National Instant Criminal Background Check System

§ 25.1 Purpose and authority.

The purpose of this subpart is to establish policies and procedures implementing the Brady Handgun Violence Prevention Act (Brady Act), Public Law 103–159, 107 Stat. 1536. The Brady Act requires the Attorney General to establish a National Instant Criminal Background Check System (NICS) to be contacted by any licensed importer, licensed manufacturer, or licensed dealer of firearms for determination of whether the transfer of a firearm to any person who is not licensed under 18 U.S.C. 923 would be in violation of Federal or state law. These regulations are issued pursuant to section 103(h) of the Brady Act, 107 Stat. 1542, and include requirements to ensure the privacy and security of the system and appeals procedures for persons who have been denied the right to purchase a firearm as a result of a NICS background check performed by the Federal Bureau of Investigation (FBI) or a state or local law enforcement agency.

§ 25.2 Definitions.

Appeal means a formal procedure to challenge the denial of a firearm transfer.

ARI means a unique Agency Record Identifier assigned by the agency submitting records for inclusion in the NICS Index.

Audit log means a chronological record of system (computer) activities that enables the reconstruction and examination of the sequence of events and/or changes in an event.

Business day means a 24-hour day (beginning at 12:01 a.m.) on which state offices are open in the state in which the proposed firearm transaction is to take place.

Control Terminal Agency means a state or territorial criminal justice agency recognized by the FBI as the agency responsible for providing state- or territory-wide service to criminal justice users of NCIC data.

Data source means an agency that provided specific information to the NICS.

Delayed means a temporary denial of a firearm transfer requiring more research prior to a NICS ''Proceed'' or ''Denied'' response.

Denied means denial of a firearm transfer based on a NICS response indicating one or more matching records were found providing reason to believe that receipt of a firearm by a prospective purchaser would violate 18 U.S.C. 922 or state law.

Denying agency means a POC or the NICS Operations Center, whichever determines that information in the NICS indicates that the transfer of a firearm to a person would violate Federal or state law, based on a background check.

Dial-up access means any routine access through commercial switched circuits on a continuous or temporary basis.

Federal agency means any authority of the United States that is an ''Agency'' under 44 U.S.C. 3502(1), other than those considered to be independent regulatory agencies, as defined in 44 U.S.C. 3502(10).

FFL (federal firearms licensee) means a person licensed by the Bureau of Alcohol, Tobacco and Firearms as a manufacturer, dealer, or importer of firearms.

Firearm has the same meaning as in 18 U.S.C. 921(a)(3).

Licensed dealer means any person defined in 27 CFR 178.11.

Licensed importer has the same meaning as in 27 CFR 178.11.

Licensed manufacturer has the same meaning as in 27 CFR 178.11.

NCIC (National Crime Information Center) means a nationwide computerized information system of criminal justice data established by the FBI as a service to local, state, and Federal criminal justice agencies.

NICS means the National Instant Criminal Background Check System, which an FFL may contact for information on whether receipt of a firearm by a person who is not licensed under 18 U.S.C. 923 would violate Federal or state law.

NICS Index means the database, to be managed by the FBI, containing information provided by Federal and state agencies about persons prohibited under Federal law from receiving or possessing a firearm. The NICS Index is separate and apart from the NCIC and the Interstate Identification Index (III).

NICS Operations Center means the unit of the FBI that receives telephone or electronic inquiries from FFLs to perform background checks, makes a determination based upon available information as to whether the receipt or transfer of a firearm would be in violation of state or Federal law, researches criminal history records, tracks and finalizes appeals, and conducts audits of system use.

NICS Operations Center's regular business hours means the hours of 9 a.m. to 2 a.m., Eastern Time, seven days a week.

NICS Representative means a person who receives telephone inquiries to the NICS Operations Center from FFLs requesting background checks and provides a response as to whether the receipt or transfer of a firearm may proceed or is delayed.

NRI (NICS Record Identifier) means the system-generated unique number associated with each record in the NICS Index.

NTN (NICS Transaction Number) means the unique number that will be assigned to each valid background check inquiry received by the NICS. Its primary purpose will be to provide a means of associating inquiries to the NICS with the response provided by the NICS to the FFL.

ORI (Originating Agency Identifier) means a nine-character identifier assigned by the FBI to an agency which has met the established qualifying criteria for ORI assignment to identify the agency in transactions on the NCIC System.

Originating Agency means an agency that provides a record to a database checked by the NICS.

POC (Point of Contact) means a state or local law enforcement agency serving as an intermediary between an FFL and the system. A POC will receive NICS background check requests from FFLs, check state or local record systems, perform NICS inquiries, determine whether matching records provide reason to believe that an individual is disqualified from possessing a firearm under Federal or state law, and respond to FFLs with the results of a NICS background check.

Proceed means a NICS response indicating no matching record was found to prohibit the transfer of a firearm.

Record means any item, collection, or grouping of information about an individual that is maintained by an agency, including but not limited to information that disqualifies the individual from receiving a firearm and that contains his or her name or other personal identifiers.

STN (State-Assigned Transaction Number) means a unique number that may be assigned by a POC to each valid background check inquiry.

System means the National Instant Criminal Background Check System (NICS).

§ 25.3 System information.

(a) There is established at the FBI a National Instant Criminal Background Check System.

(b) The system will be located at the Federal Bureau of Investigation, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306–0147.

(c) The system manager and address are: Director, Federal Bureau of Investigation, J. Edgar Hoover F.B.I. Building, 935 Pennsylvania Avenue, NW, Washington, DC. 20535.

§ 25.4 Record source categories.

It is anticipated that most records in the NICS Index will be obtained from Federal agencies. It is also anticipated that a limited number of authorized state and local law enforcement agencies will voluntarily contribute records to the NICS Index. Information in the NCIC and III systems that will be searched during a background check will be contributed voluntarily by Federal, state, local, and international criminal justice agencies.

§ 25.5 Validation and data integrity of records in the system.

(a) The FBI will be responsible for maintaining data integrity during all NICS operations that are managed and carried out by the FBI. This responsibility includes:

(1) Ensuring the accurate adding, canceling, or modifying of NICS Index records supplied by Federal agencies;

(2) An automatic rejection of any attempted entry of records into the NICS Index that contain detectable invalid data elements;

(3) Automatic purging of records in the NICS Index after they are on file for a prescribed period of time; and

(4) Quality control checks in the form of periodic internal audits by FBI personnel to verify that the information provided to the NICS Index remains valid and correct.

(b) Each data source will be responsible for ensuring the accuracy and validity of the data it provides to the NICS Index and will immediately correct any record determined to be invalid or incorrect.

§ 25.6 Accessing records in the system.

(a) FFLs may initiate a NICS background check only in connection with a proposed firearm transfer as required by the Brady Act. FFLs are strictly prohibited from initiating a NICS background check for any other purpose. The process of accessing the NICS for the purpose of conducting a NICS background check is initiated by an FFL's contacting the FBI NICS Operations Center (by telephone or electronic dial-up access) or a POC. FFLs in each state will be advised by the FBI or a POC whether they are required to initiate NICS background checks with the NICS Operations Center or the POC and how they are to do so.

(b) Access to the NICS through the FBI NICS Operations Center. FFLs may contact the NICS Operations Center by telephone only during its regular business hours. Electronic dial-up access to the NICS will be provided to a limited number of FFLs at the beginning of the system's operation. As the system develops its capacity to accept such access, a larger number of FFLs may be provided electronic dial-up access in the future. FLLs with electronic dial-up access will be able to contact the NICS 24 hours each day.

(c) The FBI NICS Operations Center, upon receiving an FFL telephone or electronic dial-up request for a background check, will:

(1) Verify the FFL Number and password;

(2) Assign a NICS Transaction Number (NTN) to a valid inquiry and provide the NTN to the FFL;

(3) Search the relevant databases (i.e., NICS Index, NCIC, III) for any matching records; and

(4) Provide the following NICS responses based upon the consolidated NICS search results to the FFL that requested the background check:

(i) *Proceed* response, if no disqualifying information was found in the NICS Index, NCIC, or III.

(ii) *Delayed* response, if the NICS search finds a record that may indicate that the prospective purchaser is disqualified from possessing a firearm by Federal or state law. A ''Delayed'' response to the FFL indicates that the firearm transfer should not proceed pending receipt of a follow-up response from the NICS or the expiration of three business days (exclusive of the day on which the query is made), whichever occurs first. (Example: An FFL requests a NICS check on a prospective firearm purchaser at 9 a.m. on Friday and shortly thereafter receives a ''Delayed'' response from the NICS. Assuming state offices in the state in which the FFL is located are closed on Saturday and Sunday and open the following Monday, Tuesday, and Wednesday, and the NICS has not yet responded with a ''Proceed'' or ''Denied'' response, the FFL may transfer the firearm at 12:01 a.m. Thursday.)

(iii) *Denied* response, when at least one matching record is found in either the NICS Index, NCIC, or III that provides reason to believe that receipt of a firearm by the prospective purchaser would violate 18 U.S.C. 922 or state law. The ''Denied'' response will be provided to the requesting FFL by the NICS Operations Center during its regular business hours after review of any potentially disqualifying information.

(5) None of the responses provided to the FFL will contain any of the underlying information in the records checked by the system.

(d) Access to the NICS through POCs. In states where a POC is designated to process background checks for the NICS, FFLs will contact the POC to initiate a NICS background check. The POC will notify FFLs in its state of the means by which FFLs can contact the POC. The NICS will provide POCs with electronic access to the system 24 hours each day through the NCIC communication network. Upon receiving a request for a background check from an FFL, a POC will:

(1) Verify the FFL number;

(2) Enter a purpose code indicating that the query of the system is for the purpose of performing a NICS background check in connection with the transfer of a firearm; and

(3) Transmit the request for a background check via the NCIC interface to the NICS.

(e) Upon receiving a request for a NICS background check, POCs may also conduct a search of available files in state and local law enforcement and other relevant record systems, and may provide a unique State-Assigned Transaction Number (STN) to each valid inquiry for a background check.

(f) When the NICS receives an inquiry from a POC, a search will be made of the relevant databases (i.e., NICS Index, NCIC, III) for any matching record(s), and the NICS will provide an electronic response to the POC. This response will consolidate the search results of the relevant databases and will include the NTN. The following types of responses may be provided by the NICS to a state or local agency conducting a background check:

(1) *No record* response, if the NICS determines, through a complete search, that no matching record exists.

(2) *Partial* response, if the NICS has not completed the search of all of its records. This response will indicate the databases that have been searched (i.e., III, NCIC, and/or NICS Index) and the databases that have not been searched. It will also provide any potentially disqualifying information found in any of the databases searched. A follow-up response will be sent as soon as all the relevant databases have been searched. The follow-up response will provide the complete search results.

(3) *Single matching record* response, if all records in the relevant databases have been searched and one matching record was found.

(4) *Multiple matching record* response, if all records in the relevant databases have been searched and more than one matching record was found.

(g) Generally, based on the response(s) provided by the NICS, and other information available in the state and local record systems, a POC will:

(1) Confirm any matching records; and

(2) Notify the FFL of the NICS response that the transfer may proceed, is delayed pending further record analysis, or is denied and include in this notification the NTN and, if applicable, an STN.

(h) In cases where a transfer is denied by a POC, the POC may provide a denial notification to the NICS. This denial notification will include the name of the person who was denied a firearm and the NTN. The information provided in the denial notification will be maintained in the NICS Audit Log described in § 25.9(b). This notification may be provided immediately by electronic message to the NICS (i.e., at the time the transfer is denied) or as soon thereafter as possible. If a denial notification is not provided by a POC, the NICS will assume that the transfer was allowed and will destroy its records regarding the transfer in accordance with the procedures detailed in § 25.9.

(i) Recording the NTN. FFLs are required to record the NTN they receive in a NICS response on the appropriate ATF form for audit and inspection purposes, under 27 CFR 178.124 recordkeeping requirements. This requirement applies regardless of whether the NTN is provided to the FFL by the FBI NICS Operations Center or a POC and whether the transfer of the firearm is completed.

(j) Access to the NICS Index for purposes unrelated to background checks required by the Brady Act. Access to the NICS Index for purposes unrelated to NICS background checks pursuant to 18 U.S.C. 922(t) shall be limited to uses for the purpose of:

(1) Providing information to Federal, state, or local criminal justice agencies in connection with the issuance of a permit or license to possess, acquire, conceal, or transfer a firearm; or

(2) Responding to an inquiry from the ATF in connection with a civil or criminal law enforcement activity relating to the Gun Control Act (18 U.S.C. Chapter 44).

§ 25.7 Querying records in the system.

(a) The following search descriptors will be required in all queries of the system for purposes of a background check:

(1) Name;

(2) Sex;

(3) Race;

(4) Complete date of birth; and

(5) State of residence.

(b) A unique numeric identifier may also be provided to search for additional records based on exact matches by the numeric identifier. Examples of unique numeric identifiers for purposes of this system are: Social Security number (to comply with Privacy Act requirements, a Social Security number will not be required by the NICS to perform any background check) and miscellaneous identifying numbers (military number or number assigned by Federal, state, or local authorities to an individual's record). Additional identifiers that may be requested by the system after an initial query include height, weight, eye and hair color, and place of birth. At the option of the querying agency, these additional identifiers may also be included in the initial query of the system.

§ 25.8 System safeguards.

(a) Information maintained in the NICS Index is stored electronically for use in an FBI computer environment. The NICS central computer will reside inside a locked room within a secured facility. Access to the facility will be restricted to authorized FBI personnel who have identified themselves and their need for access to a system security officer.

(b) Access to data stored in the NICS is restricted to duly authorized agencies. The security measures listed in paragraphs (c) through (f) of this section are the minimum to be adopted by all POCs and data sources having access to the NICS. Each state's Control Terminal Agency will provide to the NICS Operations Center a list of valid ORIs for those agencies that will serve as POCs for the NICS.

(c) State or local law enforcement agency computer centers designated by a Control Terminal Agency as POCs shall be authorized NCIC users and shall observe all procedures set forth in the NCIC Security Policy of 1992 when processing NICS background checks. The responsibilities of the Control Terminal Agencies and the computer centers include the following:

(1) The criminal justice agency computer site must have adequate physical security to protect against any unauthorized personnel gaining access to the computer equipment or to any of the stored data.

(2) Since personnel at these computer centers can have access to data stored in the NICS, they must be screened thoroughly under the authority and supervision of a state Control Terminal Agency. This authority and supervision may be delegated to responsible criminal justice agency personnel in the case of a satellite computer center being serviced through a state Control Terminal Agency. This screening will also apply to non-criminal justice maintenance or technical personnel.

(3) All visitors to these computer centers must be accompanied by staff personnel at all times.

(4) POCs utilizing a state/NCIC terminal to access the NICS must have the proper computer instructions written and other built-in controls to prevent data from being accessible to any terminals other than authorized terminals.

(5) Each state Control Terminal Agency shall build its data system around a central computer, through which each inquiry must pass for screening and verification.

(d) Authorized state agency remote terminal devices operated by POCs and having access to the NICS must meet the following requirements:

(1) POCS and data sources having terminals with access to the NICS must physically place these terminals in secure locations within the authorized agency;

(2) The agencies having terminals with access to the NICS must screen terminal operators and must restrict access to the terminals to a minimum number of authorized employees; and

(3) Copies of NICS data obtained from terminal devices must be afforded appropriate security to prevent any unauthorized access or use.

(e) FFL remote terminal devices may be used to transmit queries to the NICS via electronic dial-up access. The following procedures will apply to such queries:

(1) The NICS will incorporate a security authentication mechanism that performs FFL dial-up user

authentication before network access takes place;

(2) The proper use of dial-up circuits by FFLs will be included as part of the periodic audits by the FBI; and

(3) All failed authentications will be logged by the NICS and provided to the NICS security administrator.

(f) FFLs may use the telephone to transmit queries to the NICS, in accordance with the following procedures:

(1) FFLs may contact the NICS Operations Center during its regular business hours by a telephone number provided by the FBI;

(2) FFLs will provide the NICS Representative with their FFL Number and password, the type of sale, and the name, sex, race, date of birth, and state of residence of the prospective buyer; and

(3) The NICS will verify the FFL Number and password before processing the request.

(g) The following precautions will be taken to help ensure the security and privacy of NICS information when FFLs contact the NICS Operations Center:

(1) Access will be restricted to the initiation of a NICS background check in connection with the proposed transfer of a firearm.

(2) The NICS Representative will only provide a response of ''Proceed'' or ''Delayed'' (with regard to the prospective firearms transfer), and will not provide the details of any record information about the purchaser. In cases where potentially disqualifying information is found in response to an FFL query, the NICS Representative will provide a ''Delayed'' response to the FFL. A follow-up ''Proceed'' or ''Denied'' response will be provided by the NICS Operations Center during its regular business hours and before the expiration of three business days (exclusive of the day on which the query is made) after the FFL query.

(3) The FBI will periodically monitor telephone inquiries to ensure proper use of the system.

(h) All transactions and messages sent and received through electronic access by POCs and FFLs will be automatically logged in the NICS Audit Log described in § 25.9(b). Information in the NICS Audit Log will include initiation and termination messages, failed authentications, and matching records located by each search transaction.

(i) The FBI will monitor and enforce compliance by NICS users with the system security requirements outlined in the NICS Security Guidelines.

§ 25.9 Retention and destruction of records in the system.

(a) The NICS will retain indefinitely NICS Index records that indicate that receipt of a firearm by the individuals to whom the records pertain would violate Federal or state law unless such records are canceled by the originating agency. In cases where a firearms disability is only temporary, as defined by 27 CFR part 178, the NICS will automatically purge the pertinent record on a specified date as determined by the referenced regulation. Unless otherwise removed, records contained in the NCIC and III files that are accessed during a background check will remain in those files in accordance with established policy.

(b) The FBI will maintain an automated NICS Audit Log of all incoming and outgoing transactions that pass through the system.

(1) The Audit Log will record the following information: type of transaction (inquiry or response), line number, time, date of inquiry, header, message key, ORI, and inquiry/response data (including the name and other identifying information about the prospective purchaser and the NTN). After eighteen months, if the transfer is allowed, all information in the Audit Log related to the person or the transfer will be destroyed, other than the NTN assigned to the transfer and the date the number was assigned. Audit Log records relating to denials will be retained for 10 years, after which time they will be transferred to a Federal Records Center for storage. The NICS will not be used to establish any system for the registration of firearms, firearm owners, or firearm transactions or dispositions, except with respect to persons prohibited from receiving a firearm by 18 USC 922 (g) or (n) or by state law.

(2) The Audit Log will be used to analyze system performance, assist users in resolving operational problems, support the appeals process, or support audits of the use of the system. Searches may be conducted on the Audit Log by time frame, i.e., by day or month, or by a particular state or agency. The NICS, including the NICS Audit Log, may not be used by any department, agency, officer, or employee of the United States to establish any system for the registration of firearms, firearm owners, or firearm transactions or dispositions. The Audit Log will be monitored and reviewed on a regular basis to detect any possible misuse of the NICS data.

(c) The following records in the FBI-operated terminals of the NICS will be subject to the Brady Act's requirements for destruction:

(1) All inquiry and response messages (regardless of media) relating to a background check that results in an allowed transfer; and

(2) All information (regardless of media) contained in the NICS Audit Log relating to a background check that results in an allowed transfer.

(d) The following records of state and local law enforcement units serving as POCs will be subject to the Brady Act's requirements for destruction:

(1) All inquiry and response messages (regardless of media) relating to the initiation and result of a check of the NICS that allows a transfer; and

(2) All other records relating to the person or the transfer created as a result of a NICS check that are not part of a record system created and maintained in accordance with state law.

§ 25.10 Correction of erroneous system information.

(a) An individual may request the reason for the denial from the agency that conducted the check of the NICS (the ''denying agency,'' which will be either the FBI or the state or local law enforcement agency serving as a POC). The FFL will provide to the denied individual the name and address of the denying agency and the unique transaction number (NTN or STN) associated with the NICS background check. The request for the reason for the denial must be made in writing to the denying agency.

(b) The denying agency will respond to the individual with the reasons for the denial within five business days of its receipt of the individual's request. The response should indicate whether additional information or documents are required to support an appeal, such as fingerprints in appeals involving questions of identity (i.e., a claim that the record in question does not pertain to the individual who was denied).

(c) If the individual wishes to challenge the accuracy of the record upon which the denial is based, or if the individual wishes to assert that his or her rights to possess a firearm have been restored, he or she may make application first to the denying agency, i.e., either the FBI or the POC. If the denying agency is unable to resolve the appeal, the denying agency will so notify the individual and shall provide the name and address of the agency that originated the document containing the information upon which the denial was based. The individual may then apply for correction of the record directly to the agency from which it originated. If the record is corrected as a result of the appeal to the originating agency, the individual shall so notify the denying

agency, which will, in turn, verify the record correction with the originating agency (assuming the originating agency has not already notified the denying agency of the correction) and take all necessary steps to correct the record in the NICS.

(d) As an alternative to the above procedure, the individual may elect to direct his or her challenge to the accuracy of the record, in writing, to the FBI, NICS Operations Center, Criminal Justice Information Services Division, 1000 Custer Hollow Road, Module C–3, Clarksburg, West Virginia 26306–0147. Upon receipt of the information, the FBI will investigate the matter by contacting the POC that denied the transaction or the data source. The FBI will request the POC or the data source to verify that the record in question pertains to the individual who was denied or verify or correct the challenged record. The FBI will consider the information it receives from the individual and the response it receives from the POC or the data source. If the record is corrected as a result of the challenge, the FBI shall so notify the individual, correct the erroneous information in the NICS, and give notice of the error to any Federal department or agency or any state that was the source of such erroneous records.

(e) Upon receipt of notice of the correction of a contested record from the originating agency, the FBI or the agency that contributed the record shall correct the data in the NICS and the denying agency shall provide a written confirmation of the correction of the erroneous data to the individual for presentation to the FFL. If the appeal of a contested record is successful and less than thirty (30) days have transpired since the initial check, and there are no other disqualifying records upon which the denial was based, the NICS will communicate a ''proceed'' response to the FFL. If the appeal is successful and more than thirty (30) days have transpired since the initial check, the FFL must recheck the NICS (without being charged a fee) before allowing the sale to continue. In cases where multiple disqualifying records are the basis for the denial, the individual must pursue a correction for each record.

(f) An individual may also contest the accuracy or validity of a disqualifying record by bringing an action against the state or political subdivision responsible for providing the contested information, or responsible for denying the transfer, or against the United States, as the case may be, for an order directing that the contested information be corrected or that the firearm transfer be approved.

§ 25.11 Prohibited activities and penalties.

(a) State or local agencies, FFLs, or individuals violating this subpart A shall be subject to a fine not to exceed $10,000 and subject to cancellation of NICS inquiry privileges.

(b) Misuse or unauthorized access includes, but is not limited to, the following:

(1) State or local agencies', FFLs', or individuals' purposefully furnishing incorrect information to the system to obtain a ''proceed'' response, thereby allowing a firearm transfer;

(2) State or local agencies'', FFLs', or individuals' purposefully using the system to perform a check for unauthorized purposes; and

(3) Any unauthorized person's accessing the NICS.

Dated: May 28, 1998.

Janet Reno,

Attorney General.

[FR Doc. 98–14795 Filed 6–1–98; 8:45 am]

BILLING CODE 4410–02–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 69 and 80

[FRL–6107–7]

State of Alaska Petition for Exemption From Diesel Fuel Sulfur Requirement

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; extension of public comment period.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is extending the public comment period on the Notice of Proposed Rulemaking (NPRM), which proposes to grant the State of Alaska an exemption from the requirements of EPA's low-sulfur diesel fuel program for motor vehicles. The NPRM was published in the **Federal Register** on April 28, 1998 (63 FR 23241). The purpose of this notice is to extend the comment period from May 28, 1998 to June 12, 1998, to allow commenters additional time to respond to the NPRM.

DATES: EPA will accept comments on the NPRM until June 12, 1998.

ADDRESSES: Comments should be submitted in duplicate to Mr. Richard Babst, Fuels and Energy Division (6406–J), 401 M Street SW., Washington, DC 20460. Copies of information relevant to this NPRM are available for inspection in public docket A–96–26 at the Air Docket of the EPA, first floor, Waterside Mall, room M–1500, 401 M Street SW., Washington, DC 20460, (202) 260–7548, between the hours of 8:00 a.m. to 5:30 p.m. Monday through Friday. A duplicate public docket has been established at EPA Alaska Operations Office-Anchorage, Federal Building, room 537, 222 W. Seventh Avenue, #19, Anchorage, AK 99513–7588, and is available from 8:00 a.m. to 5:00 p.m. Monday through Friday. A reasonable fee may be charged for copying docket materials.

FOR FURTHER INFORMATION CONTACT: For information concerning the NPRM, contact Mr. Richard Babst, Fuels and Energy Division (6406–J), 401 M Street SW., Washington, DC 20460, 202–564–9473.; fax 202–565–2085; electronic mail babst.richard@epa.gov.

Dated: June 1, 1998.

Richard D. Wilson,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 98–14850 Filed 6–3–98; 8:45 am]

BILLING CODE 6560–50–P

NATIONAL SCIENCE FOUNDATION

45 CFR Parts 672 and 673

RIN 3145–AA36

Antarctic Tourism

AGENCY: National Science Foundation (NSF).

ACTION: Proposed Rule.

SUMMARY: NSF proposes issuing regulations to implement the amendments to the Antarctic Conservation Act of 1978 contained in the Antarctic Science, Tourism, and Conservation Act of 1996. These regulations will require U.S. tour operators using non-U.S. flagged vessels for Antarctic expeditions to ensure that the vessel owner has an emergency response plan. The regulation also requires U.S. tour operators to notify their passengers and crew of their Antarctic Conservation Act obligations.

DATES: Comments must be received by August 3, 1998.

ADDRESSES: Comments should be sent to Anita Eisenstadt, Assistant General Counsel, National Science Foundation, 4201 Wilson Boulevard, Room 1265, Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT: Anita Eisenstadt, Office of the General Counsel, at 703–306–1060.

SUPPLEMENTARY INFORMATION:

Background

On October 2, 1996, the Antarctic Science Tourism and Conservation Act of 1996 (ASTCA) (Pub. L. 104–227)

became law. This Act implements the Protocol on Environmental Protection to the Antarctic Treaty done at Madrid on October 4, 1991, by amending the Antarctic Conservation Act of 1978 (ACA) (16 U.S.C. 2401 *et. seq.*). Article 15 of the Protocol, ''Emergency Response Action'', requires that each Party provide for prompt and effective response action to such emergencies as might arise from activities in the Antarctic, including tourism and other non-governmental activities. On April 14, 1997, the Coast Guard issued regulations to implement Article 15 of the Protocol with respect to U.S.-flagged vessels operating in the Antarctic. The Coast Guard regulations are found at 33 CFR part 151. Because some U.S. tour operators may also charter non-U.S. flagged vessels for their Antarctic expeditions, a regulation must still be issued which ensures that non-U.S. flagged vessels used by U.S. tour operators have emergency response plans that are consistent with Article 15. The ASTCA also amends the ACA to require U.S. tour operators to notify their passengers and crew of their obligations under the Antarctic Conservation Act.

As the lead U.S. Government agency in Antarctica, NSF has long had responsibility for ensuring that United States tourism and its supporting logistics operations in the Antarctic are conducted in a manner compatible with preserving the unique values of the Antarctic. 16 USC 2401(a)(3). Section 6 of the ACA, as amended by the ASTCA, directs the Director of the National Science Foundation to issue such regulations as are necessary and appropriate to implement the Protocol and the ACA. NSF is therefore amending its regulations to add provisions that address these new requirements for tour operators.

Summary of Provisions

NSF is adding a new part 673 to its regulations to encompass the new notification and Article 15 requirements for U.S. tour operators. Tour operators using non-U.S. flagged vessels for Antarctic expeditions are required to ensure that the vessel owner or operator has an emergency response plan for such emergencies as might arise in the performance of the vessel's activities in Antarctica. Since the vessels currently being used by U.S. tour operators already have a shipboard oil pollution emergency plan (SOPEP), this rule simply requires them to amend their existing SOPEP to include a plan for prompt and effective response action to emergencies arising in the performance of the vessel's activities. The Coast Guard's regulations implementing Article 15 for U.S. flagged vessels contain the identical requirement and any plan which satisfies the requirements contained in 33 CFR 151.26 of the Coast Guard regulations will also satisfy the requirements of this rule.

Part 673 also requires U.S. tour operators to notify their crew and passengers of the environmental protection obligations of the ACA. A related requirement presently contained in Part 672 for U.S. tour operators to distribute educational materials to their passengers and crew provided by NSF is being moved to part 673 for organizational clarity.

Determinations

NSF has determined, under the criteria set forth in Executive Order 12866, that this rule is not a significant regulatory action requiring review by the Office of Information and Regulatory Affairs. As required by the Regulatory Flexibility Act, it is hereby certified this rule will not have significant impact on a substantial number of small businesses. NSF has been advised by the International Association of Antarctica Tour Operators that all vessels which are currently being used to transport passengers to Antarctica already have shipboard oil emergency plans (SOPEP) in compliance with Regulation 26 of Annex I of the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto (MARPOL 73/78). Consequently, this rule will merely require amending the existing SOPEP.

In issuing its rule, the Coast Guard conducted an industry cost analysis for preparation of an emergency response plan. 62 FR 18043, 18044 (April 14, 1997). The Coast Guard estimated the total cost for incorporating the new SOPEP amendments to range from $500 to $1400 per plan. The analysis indicated that the amendments needed to be incorporated into a vessel's current SOPEP would be approximately 5 to 10 pages and that they would take no more than five days to draft. The Coast Guard estimated that the cost per page of additions to the SOPEP is approximately $100 to $140 ($35/hr x $40hr./week)/10). Since the requirements under the Coast Guard rule are the same as the requirements under this rule, the estimates from this recent Coast Guard analysis are applicable to this rule.

Consistent with the Coast Guard rule, this rule does not require that specific equipment be carried on board the ship. It simply requires that vessels used by U.S. tour operators have plans for prompt and effective responses to emergencies which may arise in the performance of their vessels in the Antarctic. However, for purposes of estimating costs, the Coast Guard assumed that vessels would most likely choose to carry a complement of materials estimated to cost $1122 per vessel.

The Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) does not apply because there are less than ten U.S. tour operators chartering non-U.S. flagged vessels for Antarctic expeditions. Finally, NSF has reviewed this rule in light of section 2 of Executive Order 12778 and I certify for the National Science Foundation that this rule meets the applicable standards provided in sections 2(a) and 2(b) of that order.

List of Subjects

45 CFR Part 672

Administrative practice and procedure, Antarctica.

45 CFR Part 673

Administrative practice and procedure, Antarctica, Oil pollution, Vessels.

Dated: May 22, 1998.

Lawrence Rudolph,

General Counsel, National Science Foundation.

For the reasons set forth in the preamble, the National Science Foundation proposes to amend 45 CFR Part 672, and add 45 CFR Part 673 as follows:

1. The authority citation for Part 672 continues to read as follows:

Authority: 16 U.S.C. 2401 *et seq.*

2. The Part Heading to Part 672 is revised to read as follows:

PART 672—ENFORCEMENT AND HEARING PROCEDURES

§ 672.3 [Amended]

3. In § 672.3, remove paragraph (h) and redesignate paragraph (i) as (h).

4. Part 673 is added to read as follows:

PART 673—ANTARCTIC TOURISM

Sec.
673.1 Purpose of regulations.
673.2 Scope.
673.3 Definitions.
673.4 Environmental protection information.
673.5 Emergency response plan.

Authority: 16 U.S.C. 2401 *et seq.*

§ 673.1 Purpose of regulations.

The purpose of the regulations in this part is to implement the Antarctic Conservation Act of 1978, Public Law

95–541, as amended by the Antarctic Science, Tourism and Conservation Act of 1996, Public Law 104–227, and Article 15 of the Protocol on Environmental Protection to the Antarctic Treaty done at Madrid on October 4, 1991. Specifically, this part is designed to ensure that non-U.S. flagged vessels supporting non-governmental expeditions to Antarctica will have appropriate emergency response plans. This part is also designed to ensure that expedition members are informed of their environmental protection obligations under the Antarctic Conservation Act.

§ 673.2 Scope.

The requirements in this part apply to non-governmental expeditions to or within the Antarctic Treaty area for which the United States is required to give advance notice under Paragraph (5) of Article VII of the Antarctic Treaty.

§ 673.3 Definitions.

In this part:

Antarctica means the area south of 60 degrees south latitude

Expedition means an activity undertaken by one or more nongovernmental persons organized within or proceeding from the United States to or within the Antarctic Treaty area for which advance notification is required under Paragraph 5 of Article VII of the Antarctic Treaty.

Person has the meaning given that term in section 1 of title 1, United States Code, and includes any person subject to the jurisdiction of the United States except that the term does not include any department, agency, or other instrumentality of the Federal Government.

§ 673.4 Environmental protection information.

(a) Any person organizing a non-governmental expedition to or within Antarctica and who does business in the United States shall notify expedition members of the environmental protection obligations of the Antarctic Conservation Act. Upon request by the National Science Foundation, the person organizing such an expedition shall provide the National Science Foundation Office of Polar Programs with copies of materials used to meet this notification obligation.

(b) The National Science Foundation Office of Polar Programs may prepare for publication and distribution explanation of the prohibited acts set forth in the Antarctic Conservation Act, as well as other appropriate educational material for tour operators, their clients, and employees. Such material provided to tour operators for distribution to their passengers and crew shall be disseminated prior to or during travel to the Antarctic.

§ 673.5 Emergency response plan.

Any person organizing an expedition to or within Antarctica who is transporting passengers aboard a non-U.S. flagged vessel shall ensure that:

(a) The vessel owner's or operator's shipboard oil pollution emergency plan, prepared and maintained according to Regulation 26 of Annex I of the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto (MARPOL 73/78), has provisions for prompt and effective response action to such emergencies as might arise in the performance of the vessel's activities in Antarctica. If the vessel owner or operator does not have a shipboard oil pollution emergency plan, a separate plan for prompt and effective response action is required.

(b) The vessel owner or operator agrees to take all reasonable measures to implement the plan for a prompt and effective response action in the event of an emergency, taking into account considerations of risk to human life and safety.

[FR Doc. 98–14779 Filed 6–3–98; 8:45 am]

BILLING CODE 7555–01–P

LEGAL SERVICES CORPORATION

45 CFR Parts 1606 and 1625

Termination and Debarment Procedures; Recompetition Denial of Refunding

AGENCY: Legal Services Corporation.

ACTION: Proposed rule.

SUMMARY: This proposed rule would remove the Corporation's rule on denial of refunding from the Code of Federal Regulations and substantially revise the Corporation's rule governing the termination of financial assistance. These revisions are intended to implement major changes in the law governing how the Corporation deals with post-award grant disputes. The proposed termination rule also adds new provisions authorizing the Corporation to recompete service areas and to debar recipients for good cause from receiving additional awards of financial assistance.

DATES: Comments should be received on or before August 3, 1998.

ADDRESSES: Comments should be submitted to the Office of the General Counsel, Legal Services Corporation, 750 First St. NE., 11th Floor, Washington, DC 20002–4250.

FOR FURTHER INFORMATION CONTACT: Office of the General Counsel, 202–336–8817.

SUPPLEMENTARY INFORMATION: The Operations and Regulations Committee (Committee) of the Legal Services Corporation's (LSC) Board of Directors (Board) met on April 5, 1998, in Phoenix, Arizona, to consider proposed revisions to the Corporation's rules governing procedures for the termination of funding, 45 CFR part 1606, and denial of refunding, 45 CFR part 1625. The Committee made several changes to the draft rule and adopted this proposed rule for publication in the **Federal Register** for public comment. This proposed rule is intended to implement major changes in the law governing how the Corporation deals with post-award grant disputes.

Prior to 1996, LSC recipients could not be denied refunding, nor could their funding be suspended or their grants terminated, unless the Corporation complied with sections 1007(a)(9) and 1011 of the LSC Act, 42 U.S.C. 2996 et seq., as amended. For suspensions, the Corporation could not suspend financial assistance unless the recipient had been provided reasonable notice and an opportunity to show cause why the action should not be taken. For terminations and denials of refunding, the Corporation was required to provide the opportunity for a ''timely, full and fair hearing'' before an independent hearing examiner.

In 1996, the Corporation implemented a system of competition for grants that ended a recipient's right to yearly refunding. Under the competition system, grants are now awarded for specific terms, and, at the end of a grant term, a recipient has no right to refunding and must reapply as a competitive applicant for a new grant. Accordingly, this rule proposes to remove 45 CFR part 1625, the Corporation's regulation on the denial of refunding, from the Code of Federal Regulations as no longer consistent with applicable law.

The FY 1998 appropriations act made additional changes to the law affecting LSC recipients' rights to continued funding. *See* Pub. L. 105–119, 111 Stat. 2440 (1997). Section 504 provides authority for the Corporation to debar a recipient from receiving future grant awards upon a showing of good cause. Section 501(c) authorizes the Corporation to recompete a service area when a recipient's financial assistance has been terminated. Finally, section 501(b) of the appropriations act

provides that the hearing rights prescribed by sections 1007(a)(9) and 1011 are no longer applicable to the provision, denial, suspension, or termination of financial assistance to recipients. This proposed rule implements section 501(b) as it applies to terminations and denials of refunding. Also in this publication of the **Federal Register** is a related proposed rule, 45 CFR part 1623, which sets out new proposed policies and procedures for the suspension of financial assistance to recipients.

The change in the law on hearing rights does not mean that grant recipients have no rights to a hearing before the Corporation may terminate funding or debar a recipient. Sections 501(b) and 501(c) of the FY 1998 appropriations act require the Corporation to provide a recipient with ''notice and an opportunity for the recipient to be heard'' before it can terminate a grant or debar a recipient from future grants. In addition, constitutional due process generally requires that a discretionary grant recipient is entitled to ''some type of notice'' and ''some type of hearing'' before its grant funding can be suspended or terminated during the term of the grant period. Stein, *Administrative Law* at § 53.05(4). However, the new law in the appropriations act emphasizes a congressional intent to strengthen the ability of the Corporation to ensure that recipients are in full compliance with the LSC Act and regulations and other applicable law. *See* H. Rep. No. 207, 105th. Cong., 1st Sess. 140 (1997). Accordingly, under this proposed rule, the hearing procedures in part 1606 have been streamlined. The changes are intended to emphasize the seriousness with which the Corporation takes its obligation to ensure that recipients comply with the terms of their grants and provide quality legal assistance. At the same time, the Corporation intends that recipients be provided notice and a fair opportunity to be heard before any termination or debarment action is taken.

Section-by-Section Analysis

Section 1606.1 Purpose

One purpose of this proposed rule is to ensure that the Corporation is able to terminate grants or debar recipients from receipt of future grants in a timely and efficient manner when necessary as part of its ongoing effort and obligation to ensure compliance by recipients with the terms of their LSC grants or contracts. Another purpose of the rule is to ensure that scarce LSC funds are provided to recipients who can provide the most effective and economical legal assistance to the poor. Finally, the rule is also intended to ensure that a recipient is provided notice and an opportunity to be heard before it may be debarred or before its grant may be terminated by the Corporation.

Section 1606.2 Definitions

Paragraph (a) of this section defines ''debarment'' as an action to prohibit a recipient from receiving another grant award from the Corporation or from entering into a future agreement with another recipient for LSC funds. Thus, for the period of time stated in the debarment decision, a recipient would not be permitted to participate in future competitions for LSC grants or contracts. Nor could the recipient enter into any future subgrant, subcontract or similar agreement for LSC funds with another recipient. The proposed definition is similar to those used in various Federal agency debarment regulations.

Paragraph (b) defines ''recipient'' as any grantee or contractor receiving funds from the Corporation under 1006(a)(1)(A) of the LSC Act. This provision in the Act generally refers to recipients who provide direct legal assistance to eligible clients.

Paragraph (c) defines ''termination.'' A termination is a permanent reduction of funding, as opposed to a temporary withholding of funds under a suspension. When funds are suspended, they are returned to the recipient at the end of the suspension period, either because the problem has been or is in the process of being cured, or the Corporation initiates a termination process. In a termination, the funds taken or withheld by the Corporation are not returned to the recipient at a later date.

A termination may be ''in whole or in part.'' A termination ''in whole'' means that the recipient's grant with the Corporation is completely terminated and the recipient is no longer a grantee of the Corporation, at least for the grant that was terminated. A partial termination or a termination ''in part'' means that only a percentage of the recipient's grant with the Corporation is terminated. The recipient is still a grantee of the Corporation but receives less funding under the grant. The definition of termination also includes language that clarifies that partial terminations will reduce only the amount of the recipient's current year's funding, unless the Corporation provides otherwise in the final termination decision.

The definition is not intended to suggest that a partial termination affects the amount of funding required by statute to be allocated to the affected recipient's service area. The Corporation's appropriations act requires that funding be provided to service areas according to a prescribed formula. Pursuant to that formula, a specific grant amount is awarded to a recipient pursuant to the Corporation's competition process. However, this does not mean that the Corporation cannot recover funds awarded under a grant when it sanctions a recipient for cause. The legislative history of the funding provision makes it clear that the Corporation may withhold or recover grant funds for good cause. When funds are recovered, they may be reprogrammed and used for similar purposes, according to relevant law and Corporation policy. Comments are requested on whether substantial recoveries should be applied to the same service areas.

Paragraphs (c) (1) through (4) clarify what is not intended to be included within the definition of termination. Paragraph (c)(1) provides that a reduction or rescission of a recipient's funding required by law is not a termination for the purposes of this part. For example, in 1995, the Corporation was required to reduce and rescind its recipients' funding pursuant to Congressional legislation that rescinded the amount of appropriations for Corporation grants and required the termination of a category of recipients. Subparagraphs (c)(2) and (c)(3) provide that a recovery of funds pursuant to § 1630.9(b) of the Corporation's regulations on costs standards and procedures or § 1628.3(c) of the Corporation's rule on fund balances does not constitute a termination.

Finally, paragraph (c)(4) provides that a reduction of funding of less than 5 percent of a recipient's current annual level of financial assistance does not constitute a termination. Administrative hearings are costly and time-consuming for all parties involved. For certain compliance problems, the Corporation may wish to utilize lesser sanctions than suspensions and terminations. The Committee noted that the Corporation should promulgate regulations setting out standards and procedures for applying lesser sanctions before such actions may be taken by the Corporation. The use of lesser sanctions is consistent with the Corporation's rules on denials of refunding in which a denial of refunding did not include a reduction of 10 percent or less of a recipient's annual funding level. The notion that minor reductions do not

necessarily warrant elaborate hearings has been implicit in LSC's rules since the establishment of the Corporation and, indeed, is traceable to the rules of LSC's antecedent organization, the Office of Economic Opportunity (OEO) which defined a denial of refunding as a reduction of 20 percent or more of a grant. See 48 FR 54196 (Nov. 30, 1983). OEO's denial of a hearing for cases covering funding reductions of less than 20 percent was specifically upheld. *Economic Opportunity Commission of Nassau County* v. *Weinberger,* 524 F.2d 393 (2d Cir. 1975). Part 1618, the Corporation's regulations on enforcement procedures, has long provided that, in addition to the statutory defunding remedies, the Corporation ''may take other action to enforce compliance with the Act.'' See § 1618.5(b).

The Committee specifically seeks input on the legal and practical effects of including this provision in the rule and, if included, whether the provision's 5 percent is the appropriate cutoff and whether a dollar amount should also be included.

Section 1606.3 Grounds for a Termination

This section sets out the grounds for a termination. Paragraph (a)(1) permits termination for a substantial violation by a recipient of applicable law or the terms or conditions of its grant with the Corporation. This provision has been carried over from the current rule, except that the proposed provision no longer provides the recipient with a right to take corrective action before the Corporation may terminate its grant. A recipient that has substantially violated the terms of its grant with the Corporation is not entitled to a second chance as a matter of right. If the Corporation identifies a compliance problem with a recipient that has the potential for easy correction pursuant to a corrective action plan, the Corporation already has discretion to require a recipient to take corrective action. In addition, paragraph (b)(4) provides that, in determining if there has been a substantial violation that warrants initiation of procedures under this part, the Corporation will consider whether a recipient has failed to take appropriate and adequate steps to cure the problem when it became aware of a violation.

Paragraph (b) of this section proposes criteria for the Corporation to consider to determine whether there has been a ''substantial violation'' under paragraph (a)(2). The current rules on termination and denial of refunding include two different undefined standards. Terminations are undertaken for *substantial violations* and denial of refunding for *significant violations.* There has been some confusion over the years about the scope of the meaning of the two standards.

The proposed criteria include the consideration of whether the violation was intentional, the importance of the restriction or requirement violated, and whether the violation is of a serious nature rather than merely technical or minor. The Corporation will also consider whether the immediate problem is part of a history of violations by the recipient and whether the recipient took appropriate action to correct the problem when it became aware of the violation. These criteria would permit the Corporation to take action, for example, for a single serious violation. The fifth criterion permits the Corporation to consider whether the violation was intentional. Although the Committee included this criterion in the proposed rule, it requests public comment on whether other standards would be more appropriate; for example, whether the recipient ''knowingly and willfully'' committed the violation.

The current rule expressly states that action will be taken against a recipient only for a substantial violation that occurred at a time when the law violated by the recipient was in effect. This proposed rule deletes such language as unnecessary. Retroactive application of law is strongly disfavored in the law, and the Corporation may not sanction recipients for violations of a law that was not in effect at the time of the violation. Paragraph (a)(2) includes as a ground for termination the substantial failure of the recipient to provide high quality, economical, and effective legal assistance. This provision is in the current rule. Although the competition process provides another method for making quality judgments about and weeding out recipients that perform poorly, this provision is retained so that the Corporation may act when necessary during the term of a grant or contract to terminate a recipient that has substantially failed to provide high quality, economical, and effective legal assistance. The Committee requests public comment on what standards should be considered by the Corporation to determine whether there has been a substantial failure of a recipient to provide such legal assistance.

Section 1606.4 Grounds for Debarment

Section 504 of the Corporation's FY 1998 appropriations act provides authority for the Corporation to debar a recipient from receiving future grant awards upon a showing of good cause. Debarments are common in the Federal government for both procurement contracts and assistance grants. Causes for debarment range from debarments for fraud, embezzlement, and false claims, to debarments for a Federal grantee's longstanding unsatisfactory performance or the failure to pay a substantial debt owed to the Federal government. *Principles of Federal Appropriations Law* at 10–28, United States Government Accounting Office (GAO); Grants Management Advisory Service at section 558 (1995).

The grounds for debarment of an LSC grantee implement section 501(c) of the Corporation's appropriations act and are set out in paragraph (b) of this section. They include a termination of a recipient for violations of Federal law related to the use of Federal funds, such as law on fraud, bribery, or false claims against the government; or substantial violations by a recipient of the terms of its grant with the Corporation. Also, similar to Federal practice, recipients may also be debarred for knowingly entering into any subgrant or similar agreement with an entity debarred by the Corporation.

Section 1606.4(a)(5) permits the Corporation to debar a recipient if the recipient seeks judicial review of an agency action taken under any Federally-funded program for which the recipient receives Federal funds and applies regardless of the source of funding used by the recipient for the litigation. This provision applies when the recipient files a lawsuit on behalf of the recipient and the lawsuit is related to a program for which the recipient receives Federal funds. It does not apply when the recipient files a lawsuit on behalf of a client of the recipient which seeks judicial review of an agency action that affected the client.

Section 1606.5 Termination and Debarment Procedures

This section states the due process requirement that, before a recipient's grant or contract may be terminated or a recipient may be debarred, it will be provided notice and an opportunity to be heard according to the procedures in this part.

Section 1606.6 Proposed Decision

This section sets out the requirements for providing notice to the recipient of the Corporation's proposed decision to terminate a recipient's funding or to debar a recipient. Under this section the Corporation may simultaneously take action to terminate and debar a recipient in the same proceeding.

The notice of the proposed decision is required by paragraph (a) of this section to be in writing and must provide the grounds for termination or debarment in a manner sufficiently detailed to inform the recipient of the charges against it, the legal and factual bases of the charges, and the proposed sanctions. Paragraph (b) requires that the recipient be told of its right to request an informal conference and a hearing. Paragraph (c) sets out the circumstances when a proposed decision becomes final.

Section 1606.7 Informal Conference

This section is generally the same as § 1606.5 in the current rule, but has been renumbered and restructured for clarity and ease of use. It allows the Corporation and recipient to have an informal conference to either resolve the matter at issue through compromise or settlement or to narrow the issues and share information so that any subsequent hearing might be rendered shorter or less complicated. Language in the current rule stating that the preliminary conference may be adjourned for deliberation or consultation is proposed to be deleted as unnecessary. Nothing in this section requires that the conference must be completed under any particular time frame and, indeed, the language in this section emphasizes the informality of the conference, thus providing the Corporation a large measure of discretion in determining how the conference will be conducted.

This proposed rule has also eliminated the provisions providing a right for the recipient or the Corporation to request a pre-hearing conference. The intent is to simplify and shorten the hearing procedures available for terminations. The informal conference section already provides an opportunity for the parties in the dispute to narrow and define issues and to determine whether compromise or settlement is possible.

Section 1606.8 Hearing

This section delineates the procedures for the due process hearing that will be provided to a recipient before it may be debarred or before its grant may be terminated. It has been simplified from the process in the current rule by deleting unnecessary provisions and provisions permitting third party participation in the hearing. The deletion is not intended to mean that third parties may never participate in a hearing. However, the proposed rule would no longer provide a recipient with the right to demand such participation.

Paragraph (c) provides for an impartial hearing officer who will be appointed by the President or designee. Reference to a designee is included because, occasionally, the President may be disqualified from choosing a hearing officer. Delegation would be appropriate, for example, if the President has had prior involvement in the matter under consideration.

Under the current rule, which was promulgated to implement section 1011 of the LSC Act, an independent hearing examiner was required to preside over the hearing. The independent hearing examiner was required to be someone who was not employed by the Corporation or who did not perform duties within the Corporation. Because section 1011 no longer applies to hearing procedures under this part, recipients no longer have a right to an independent hearing examiner.

Constitutional due process, however, requires that, before funding for a recipient of Federal grants may be terminated during the grant term, the recipient must be provided a hearing before an impartial decision maker. Stein, *Administrative Law* at § 53.05(4). An impartial decision maker may be an employee of the Corporation as long as that employee has not prejudged the adjudicative facts and has no pecuniary interest or personal bias in the decision. *Id.; Spokane County Legal Services* v. *Legal Services Corporation*, 614 F. 2d 662, 667–668 (9th Cir. 1980). See also, M. Asinow, *When the Curtain Falls: Separation of Functions in the Federal Administrative Agencies*, 81 *Columbia Law Review* 759, 782 (1981). In order to ensure against such prejudgment, this rule requires that a hearing officer be a person who has not been involved in the pending action.

The Corporation has the burden of proof under the current rule. This proposed section places the burden on the recipient. It is the intent of these procedures that the Corporation not make a prejudgment before the hearing. Rather, when it has reason to believe that grounds exist for a termination or debarment, it issues a proposed decision and the recipient then has the burden to show why the Corporation should not take the action it proposes. The Committee has asked for comments on whether the language in this proposed rule adequately reflects that intent. The change is also intended to reflect the emphasis in current law on strengthening the Corporation's ability to sanction recipients and to recompete service areas. See H. Rep. No. 207, 105th Cong., 1st Sess. 140 (1997).

Section 1606.9 Recommended Decision

Only minor changes have been made to this section, which sets out the requirements for the recommended decision issued by the hearing officer.

Section 1606.10 Final Decision

Mostly technical revisions are made to this section, which delineates the process by which a party to the termination proceeding may request a review of the recommended decision by the President. Language has been added, however, requiring that the President's review be based solely on the record of the hearing below and any additional submissions requested by the President. A decision by the President is a final decision.

Section 1606.11 Qualifications on Hearing Procedures

It is the intent of this section to clarify that, if a recipient has already been provided a termination hearing on the underlying grounds for the debarment, the recipient is not due a second termination hearing under this part. Rather, the recipient will be given a brief review process set out in paragraph (b) of this section. In many cases, the Corporation may utilize the procedure delineated in paragraph (a) of this section, which permits the Corporation to simultaneously take action to terminate and debar a recipient within the same hearing procedure. In any debarment action where the recipient has not already been provided a termination hearing, the recipient will be provided the same hearing procedures set out in this rule for terminations.

Paragraph (d) permits the Corporation to reverse a debarment decision if there has been a reversal of the conviction or civil judgment upon which the debarment was based, new material evidence has been discovered, there has been a bona fide change in the ownership or management of the recipient, the causes for the debarment have been eliminated, or for other reasons the Corporation finds appropriate. This paragraph is patterned after Federal debarment regulations. See, e.g., 29 CFR 1471.320. Paragraph (d)(2) takes account of reversals of convictions for violations of Federal law under part 1640.

Section 1606.12 Time and Waiver

With two exceptions, this paragraph is essentially the same as in the current rule. Paragraph (b) in the current rule is deleted in this proposed rule, because it implemented a time limit to the proceedings required under law that no

longer has effect. Also, paragraph (c) in the current rule is not included, because it provides for the waiver or modification of any provision in this part. Such a sweeping waiver provision has the potential to undo the due process rights of recipients that are required under the Constitution. The rule already provides sufficient discretion and flexibility.

Section 1606.13 Interim Funding

This section requires the Corporation to continue funding the recipient at its current level until the termination proceeding set out in this part is completed. This is consistent with the current rule and the due process requirement that funding not be terminated until a fair hearing has been provided.

Paragraph (b) provides that a failure of the Corporation to meet a time requirement does not preclude the Corporation from terminating funding or debarring a recipient from receiving additional funding. See *Brock* v. *Pierce County*, 476 U.S. 253 (1986).

Section 1606.14 Recompetition

This section replaces the section in the current rule on termination funding. Section 501(c) of Public Law 105–119 authorizes the Corporation to recompete a service area when a recipient's financial assistance has been terminated after notice and an opportunity to be heard. Accordingly, this section authorizes the Corporation to recompete any service area where a final decision has been made under this part to terminate in whole a recipient's grant for any service area. It also provides that until a new recipient has been awarded a grant for the service area pursuant to the competition process, the Corporation shall take all practical steps to ensure the continued provision of legal assistance in the service area pursuant to § 1634.11 of the Corporation's rule on competition procedures.

List of Subjects in 45 CFR Part 1606

Administrative practice and procedures, Legal services.

For reasons set out in the preamble, LSC proposes to revise 45 CFR part 1606 to read as follows:

PART 1606—TERMINATION AND DEBARMENT PROCEDURES; RECOMPETITION

Sec.

1606.1 Purpose.
1606.2 Definitions.
1606.3 Grounds for a termination.
1606.4 Grounds for debarment.
1606.5 Termination and debarment procedures.
1606.6 Proposed decision.
1606.7 Informal conference.
1606.8 Hearing.
1606.9 Recommended decision.
1606.10 Final decision.
1606.11 Qualifications on hearing procedures.
1606.12 Time and waiver.
1606.13 Interim funding.
1606.14 Recompetition.

Authority: 42 U.S.C. 2996e (b)(1) and 2996f(a)(3); Pub. L. 105–119, 111 Stat. 2440, Secs. 501(b) and (c) and 504; Pub. L. 104–134, 110 Stat. 1321.

§ 1606.1 Purpose.

The purpose of this rule is to:

(a) Ensure that the Corporation is able to take timely action to deal with incidents of substantial noncompliance by recipients with a provision of the LSC Act, the Corporation's appropriations act or other law applicable to LSC funds, a Corporation rule, regulation, guideline or instruction, or the terms and conditions of the recipient's grant or contract with the Corporation;

(b) Provide timely and fair due process procedures when the Corporation has made a preliminary decision to terminate a recipient's LSC grant or contract, or to debar a recipient from receiving future LSC awards of financial assistance; and

(c) Ensure that scarce funds are provided to recipients who can provide the most effective and economical legal assistance to eligible clients.

§ 1606.2 Definitions.

For the purposes of this part:

(a) *Debarment* means an action taken by the Corporation to exclude a recipient from receiving an additional award of financial assistance from the Corporation or from receiving additional LSC funds from another recipient of the Corporation pursuant to a subgrant, subcontract or similar agreement, for the period of time stated in the final debarment decision.

(b) *Recipient* means any grantee or contractor receiving financial assistance from the Corporation under section 1006(a)(1)(A) of the LSC Act.

(c)(1) *Termination* means that a recipient's level of financial assistance under its grant or contract with the Corporation will be permanently reduced in whole or in part prior to the expiration of the term of a recipient's current grant or contract. A partial termination will affect only the recipient's current year's funding, unless the Corporation provides otherwise in the final termination decision.

(2) A termination does not include:

(i) A reduction of funding required by law, including a reduction in or rescission of the Corporation's appropriation that is apportioned among all recipients of the same class in proportion to their current level of funding;

(ii) A reduction or deduction of LSC support for a recipient under the Corporation's fund balance regulation at 45 CFR part 1628;

(iii) A recovery of disallowed costs under the Corporation's regulation on costs standards and procedures at 45 CFR part 1630; or

(iv) A reduction of funding of less than 5 percent of a recipient's current annual level of financial assistance imposed by the Corporation as a lesser sanction.

§ 1606.3 Grounds for a termination.

(a) A grant or contract may be terminated when:

(1) There has been a substantial violation by the recipient of a provision of the LSC Act, the Corporation's appropriations act or other law applicable to LSC funds, or Corporation rule, regulation, guideline or instruction, or a term or condition of the recipient's grant or contract; or

(2) There has been a substantial failure by the recipient to provide high quality, economical, and effective legal assistance, as measured by generally accepted professional standards, the provisions of the LSC Act, or a rule, regulation or guidance issued by the Corporation.

(b) A determination of whether there has been a substantial violation for the purposes of paragraph (a)(1) of this section will be based on consideration of the following criteria:

(1) The importance and number of restrictions or requirements violated;

(2) The seriousness of the violation;

(3) The extent to which the violation is part of a pattern;

(4) The extent to which the recipient has failed to take action to cure the violation when it became aware of a violation; and

(5) Whether the violation was intentional.

(c) Paragraph (a)(1) of this section is not applicable to any violation that occurred more than 5 years prior to the date the recipient receives notice of the violation pursuant to § 1606.6(a).

§ 1606.4 Grounds for debarment.

(a) The Corporation may debar a recipient, on a showing of good cause, from receiving an additional award of financial assistance from the Corporation.

(b) As used in paragraph (a) of this section, ''good cause'' includes:

(1) Termination of financial assistance of the recipient pursuant to part 1640 of this chapter;

(2) Termination of financial assistance in whole of the most recent grant of financial assistance;

(3) The substantial violation by the recipient of the restrictions delineated in § 1610.2(a) and (b) of this chapter, provided that the violation occurred within 5 years prior to the receipt of the debarment notice by the recipient;

(4) Knowing entry by the recipient into a subgrant, subcontract, or other similar agreement with an entity debarred by the Corporation; or

(5) The filing of a lawsuit by a recipient, provided that the lawsuit:

(i) Was filed on behalf of the recipient;

(ii) Was related to a program for which the recipient receives Federal funds;

(iii) Named the Corporation, or any agency or employee of a Federal, State, or local government as a defendant; and

(iv) Was initiated after the effective date of this rule.

§ 1606.5 Termination and debarment procedures.

Before a recipient's grant or contract may be terminated or a recipient may be debarred, the recipient will be provided notice and an opportunity to be heard as set out in this part.

§ 1606.6 Proposed decision.

(a) When the Corporation has made a proposed decision that a recipient's grant or contract should be terminated and/or that a recipient should be debarred, the Corporation employee who has been designated by the President as the person to bring such actions (hereinafter referred to as the ''designated employee'') shall issue a written notice upon the recipient and the Chairperson of the recipient's governing body. The notice shall:

(1) State the grounds for the proposed action;

(2) Identify, with reasonable specificity, any facts or documents relied upon as justification for the proposed action;

(3) Inform the recipient of the proposed sanctions.

(4) Advise the recipient of its right to request:

(i) An informal conference under § 1606.7; and

(ii) A hearing under § 1606.8; and

(5) Inform the recipient of its right to receive interim funding pursuant to § 1606.13.

(b) If the recipient does not request review within the time prescribed in § 1606.7(a) or § 1606.8(a), the proposed determination shall become final.

§ 1606.7 Informal conference.

(a) A recipient may submit a request for an informal conference within 30 days of its receipt of the proposed decision.

(b) Within 5 days of receipt of the request, the designated employee shall notify the recipient of the time and place the conference will be held.

(c) The designated employee shall conduct the informal conference.

(d) At the informal conference, the designated employee and the recipient shall both have an opportunity to state their case, seek to narrow the issues, and explore the possibilities of settlement or compromise.

(e) The designated employee may modify, withdraw, or affirm the proposed determination in writing, a copy of which shall be provided to the recipient within 10 days of the conclusion of the informal conference.

§ 1606.8 Hearing.

(a) The recipient may make written request for a hearing within 30 days of its receipt of the proposed decision or within 15 days of receipt of the written determination issued by the designated employee after the conclusion of the informal conference.

(b) Within 10 days after receipt of a request for a hearing, the Corporation shall notify the recipient in writing of the date, time and place of the hearing and the names of the hearing officer and of the attorney who will represent the Corporation. The time, date and location of the hearing may be changed upon agreement of the Corporation and the recipient.

(c) A hearing officer shall be appointed by the President or designee and may be an employee of the Corporation. The hearing officer shall not have been involved in the current termination or debarment action and the President or designee shall determine that the person is qualified to preside over the hearing as an impartial decision maker. An impartial decision maker is a person who has not formed a prejudgment on the case and does not have a pecuniary interest or personal bias in the outcome of the proceeding.

(d) The hearing shall be scheduled to commence at the earliest appropriate date, ordinarily not later than 30 days after the notice required by paragraph (b) of this section.

(e) The hearing officer shall preside over and conduct a full and fair hearing, avoid delay, maintain order, and insure that a record sufficient for full disclosure of the facts and issues is maintained.

(f) The hearing shall be open to the public unless, for good cause and the interests of justice, the hearing officer determines otherwise.

(g) The Corporation and the recipient shall be entitled to be represented by counsel or by another person.

(h) At the hearing, the Corporation and the recipient each may present its case by oral or documentary evidence, conduct examination and cross-examination of witnesses, examine any documents submitted, and submit rebuttal evidence.

(i) The hearing officer shall not be bound by the technical rules of evidence and may make any procedural or evidentiary ruling that may help to insure full disclosure of the facts, to maintain order, or to avoid delay. Irrelevant, immaterial, repetitious or unduly prejudicial matter may be excluded.

(j) Official notice may be taken of published policies, rules, regulations, guidelines, and instructions of the Corporation, of any matter of which judicial notice may be taken in a Federal court, or of any other matter whose existence, authenticity, or accuracy is not open to serious question.

(k) A stenographic or electronic record shall be made in a manner determined by the hearing officer, and a copy shall be made available to a party upon payment of its cost.

(l) The recipient shall have the burden of proof in the hearing under this section.

§ 1606.9 Recommended decision.

(a) Within 20 calendar days after the conclusion of the hearing, the hearing officer shall issue a written recommended decision which may:

(1) Terminate financial assistance to the recipient as of a specific date; or

(2) Continue the recipient's current grant or contract, subject to any modification or condition that may be deemed necessary on the basis of information adduced at the hearing; and/or

(3) Debar the recipient from receiving an additional award of financial assistance from the Corporation.

(b) The recommended decision shall contain findings of the significant and relevant facts and shall state the reasons for the decision. Findings of fact shall be based solely on the record of, and the evidence adduced at, the informal conference and the hearing or on matters of which official notice was taken.

§ 1606.10 Final decision.

(a) If neither the Corporation nor the recipient requests review by the President, a recommended decision shall become final 10 calendar days after receipt by the recipient.

(b) The recipient or the Corporation may seek review by the President of a recommended decision. A request shall be made in writing within 10 days after receipt of the recommended decision by the party seeking review and shall state in detail the reasons for seeking review.

(c) The President's review shall be based solely on the information in the administrative record of the termination or debarment proceedings and any additional submissions, either oral or in writing, that the President may request.

(d) As soon as practicable after receipt of the request for review of a recommended decision, but not later than 30 days after the request for review, the President may adopt, modify, or reverse the recommended decision, or direct further consideration of the matter. In the event of modification or reversal, the President's decision shall conform to the requirements of § 1606.9(b).

(e) The President's decision shall become final upon receipt by the recipient.

§ 1606.11 Qualifications on hearing procedures.

(a) The Corporation may simultaneously take action to debar and terminate a recipient within the same hearing procedure that is set out in §§ 1606.6 through 1606.10 of this part. In such a case, the same hearing officer shall oversee both the termination and debarment actions.

(b) If the Corporation does not simultaneously take action to debar and terminate a recipient under paragraph (a) of this section and initiates a debarment action based on a prior termination under § 1606.4(b) (1) or (2), the hearing procedures set out in § 1606.6 through 1606.10 shall not apply. Instead:

(1) The President shall appoint a hearing officer to review the matter and make a written recommended decision on debarment.

(2) The hearing officer's recommendation shall be based solely on the information in the administrative record of the termination proceedings providing grounds for the debarment and any additional submissions, either oral or in writing, that the hearing officer may request.

(3) If neither party appeals the hearing officer's recommendation within 10 days of receipt of the recommended decision, the decision shall become final.

(4) Either party may appeal the recommended decision to the President who shall review the matter and issue a final written decision pursuant to § 1606.9(b).

(c) All final debarment decisions shall state the effective date of the debarment and the period of debarment, which shall be commensurate with the seriousness of the cause for debarment but shall not be for longer than 6 years.

(d) The Corporation may reverse a debarment decision upon request for the following reasons:

(1) Newly discovered material evidence;

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

(3) Bona fide change in ownership or management of a recipient;

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

(5) Other reasons the Corporation deems appropriate.

§ 1606.12 Time and waiver.

Except for the 6-year time limit for debarments in § 1606.11(c), any period of time provided in these rules may, upon good cause shown and determined, be extended:

(a) By the designated employee who issued the proposed decision until a hearing officer has been appointed;

(b) By the hearing officer, until the recommended decision has been issued;

(c) By the President at any time.

§ 1606.13 Interim funding.

(a) Pending the completion of termination proceedings under this part, the Corporation shall provide the recipient with the level of financial assistance provided for under its current grant or contract with the Corporation.

(b) Failure by the Corporation to meet a time requirement of this part does not preclude the Corporation from terminating a recipient's grant or contract with the Corporation.

§ 1606.14 Recompetition.

After a final decision has been issued by the Corporation terminating financial assistance to a recipient in whole for any service area, the Corporation shall implement a new competitive bidding process for the affected service area. Until a new recipient has been awarded a grant pursuant to such process, the Corporation shall take all practical steps to ensure the continued provision of legal assistance in the service area pursuant to § 1634.11.

PART 1625—[REMOVED AND RESERVED]

For the reasons set out in the preamble, and under the authority of 42 U.S.C. 2996g(e), 45 CFR part 1625 is proposed to be removed and reserved.

Dated: May 29, 1998.

Victor M. Fortuno,

General Counsel.

[FR Doc. 98–14772 Filed 6–3–98; 8:45 am]

BILLING CODE 7050–01–P

LEGAL SERVICES CORPORATION

45 CFR Part 1623

Suspension Procedures

AGENCY: Legal Services Corporation.

ACTION: Proposed rule.

SUMMARY: This proposed rule substantially revises the Legal Services Corporation's rule on procedures for the suspension of financial assistance to recipients to implement changes in the law governing how the Corporation deals with post-award grant disputes.

DATES: Comments should be received on or before August 3, 1998.

ADDRESSES: Comments should be submitted to the Office of the General Counsel, Legal Services Corporation, 750 First St. NE., 11th Floor, Washington, DC 20002–4250.

FOR FURTHER INFORMATION CONTACT: Office of the General Counsel, 202–336–8817.

SUPPLEMENTARY INFORMATION: The Operations and Regulations Committee (Committee) of the Legal Services Corporation's (LSC) Board of Directors (Board) met on April 5, 1998, in Phoenix, Arizona, to consider proposed revisions to the Corporation's rule on procedures for suspending funding to LSC recipients. The Committee made several changes to the draft rule and adopted this proposed rule for publication in the **Federal Register** for public comment. This proposed rule is intended to implement major changes in the law governing how the Corporation deals with post-award grant disputes.

Prior to 1996, LSC recipients could not be denied refunding, nor could their funding be suspended or their grants terminated, unless the Corporation complied with sections 1007(a)(9) and 1011 of the LSC Act, 42 U.S.C. 2996 et seq., as amended. For suspensions, the Corporation could not suspend financial assistance unless the recipient had been provided reasonable notice and an opportunity to show cause why the action should not be taken. For terminations and denials of refunding,

the Corporation was required to provide the opportunity for a ''timely, full and fair hearing'' before an independent hearing examiner.

In 1996, the Corporation implemented a system of competition for grants that ended a recipient's right to yearly refunding. Under the competition system, grants are now awarded for specific terms, and, at the end of a grant term, a recipient has no right to refunding and must reapply as a competitive applicant for a new grant.

The FY 1998 appropriations act made additional changes to the law affecting LSC recipients' rights to continued funding. See Pub. L. 105–119, 111 Stat. 2440 (1997). Section 501(b) of the appropriations act provides that a recipient's hearing rights under sections 1007(a)(9) and 1011 are no longer applicable to the provision, denial, suspension, or termination of financial assistance to recipients. This proposed rule implements this new law as it applies to suspensions. This proposed rule would also remove 45 CFR part 1625 from the Code of Federal Regulations as no longer consistent with applicable law.

Another proposed rule, also in this publication of the Federal Register, deals with the new law as it applies to terminations and denials of refunding. *See* Proposed rule 45 CFR part 1606, which would revise the Corporations's policies and procedures for terminations and proposes to add provisions dealing with debarments and recompetition.

The change in the law regarding suspensions does not mean that grant recipients have no hearing rights before their funds are suspended. Constitutional due process generally requires that a discretionary grant recipient is entitled to ''some type of notice'' and ''some type of hearing'' before its grant funding can be suspended or terminated during the grant period. Stein, *Administrative Law* at § 53.05(4). However, the new law emphasizes a congressional intent to strengthen the ability of the Corporation to ensure that recipients are in full compliance with the LSC Act and regulations. *See* H. Rep. No. 207, 105th. Cong., 1st Sess. 140 (1997). Accordingly, under this proposed rule, the hearing procedures for suspensions have been streamlined. The changes emphasize the seriousness with which the Corporation takes its obligation to ensure that recipients comply with the terms of their grants and provide quality legal assistance but, at the same time, recipients are provided notice and a fair opportunity to be heard before any suspension action is taken.

Section-by-Section Analysis

Section 1623.1 Purpose

This section is revised to clarify the purpose of a suspension, as opposed to other sanctions the Corporation might choose to apply to a recipient. A suspension is one of several actions that may be taken by the Corporation in a post-award grant dispute to ensure the compliance of LSC recipients with the terms of their LSC grants. A suspension is generally used by Federal agencies as a temporary withdrawal of a grantee's authority to obligate or receive grant funds, pending corrective action by the grantee or a decision by the agency to terminate the grant. Stein J., *Administrative Law* at § 53.02(3). Suspensions are intended to be used in emergency situations which require prompt action and thus are normally not subject to full administrative appeals. *Id.* For example, the Corporation might choose to suspend when quick action is necessary to safeguard against a loss of LSC funds or the Corporation believes that prompt action will bring about corrective action and prevent the likely recurrence of violations.

Section 1623.2 Definition

The definition of *suspension* is revised to clarify the nature of a suspension and the differences between a suspension and a termination. The proposed definition states that a suspension withholds funding to a recipient until the end of the suspension period. This means that when the Corporation suspends funding after a hearing under this part, it may only withhold the funds until the end of the suspension period as provided in § 1623.4(e) and (f). After the suspension period, the Corporation returns the funds to the recipient, and either begins termination proceedings or determines that the recipient is taking adequate steps to cure the problem. By contrast, a termination is a permanent taking of a recipient's financial assistance. When the Corporation terminates funding, in whole or in part, the funds are not returned to the recipient, even if the problems are cured at a later date.

Section 1623.3 Grounds for Suspension

Paragraph (a) of this section sets out the grounds for most suspensions. The underlying reason for a suspension is a substantial violation by the recipient of the terms of its LSC grant. A decision to suspend, rather than terminate, funding will usually be made when the Corporation has reason to believe that prompt action is necessary to safeguard LSC funds, effect an immediate cure for the problem at issue, or prevent further substantive harm.

A provision setting out new proposed criteria for determining whether there has been a ''substantial violation'' is included in this section in paragraph (b). The current rules on suspension, termination and denial of refunding include two different *undefined* standards. Terminations or suspensions are undertaken for *substantial violations* and denial of refunding for *significant violations*. Because there has been some confusion over the years about the scope of the meaning of the two standards, the Committee included this paragraph in the rule to provide better guidance to recipients on what constitutes a violation sufficient to constitute grounds for a suspension action.

The proposed criteria include the consideration of whether the violation is intentional, the importance of the restriction or requirement violated, and whether the violation is of a serious nature rather than merely technical or minor. The Corporation would also consider whether the immediate problem is part of a history of violations by the recipient. These criteria would permit the Corporation to take action, for example, for a single serious violation.

The fourth criterion permits the Corporation to consider whether the violation was intentional. Although the Committee included this criterion in the proposed rule, it requests public comment on other standards that might be more appropriate: for example, whether the recipient ''knowingly and willfully'' committed the violation.

Paragraph (c) implements section 509 of the Corporation's 1996 appropriations act, which has been incorporated by the Corporation's FY 1998 appropriations act. Section 509 requires recipients to complete audits which are consistent with the guidance promulgated by the Office of Inspector General. In addition, it authorizes the Corporation, after receiving a recommendation from the OIG, to suspend funding to a recipient who fails to have an acceptable audit and allows the Corporation to continue the suspension until the recipient has completed an acceptable audit. An audit is acceptable when it is deemed to be acceptable by the OIG. This generally means that the audit is prepared according to the OIG audit guidances, which consist of the *LSC Audit Guide for Recipients and Auditors* and any relevant bulletins issued by the OIG. Pursuant to this provision, the OIG determines whether an audit is acceptable and makes a recommendation to the Corporation to suspend. The Corporation then may

suspend and the suspension will be ended when the OIG determines that the audit is acceptable.

Section 1623.4 Suspension Procedures

The suspension procedures in this section are substantially the same as in the current rule, but are set out in a new structure for clarity. However, several changes have been made.

First, references to the employee who ordered a suspension are replaced by a reference to the Corporation. Second, this section deletes the provision in § 1623.3(c) of the current rule that requires the Corporation, except for unusual circumstances, to give the recipient an opportunity to take effective corrective action before suspending funding. Instead, paragraph (a)(3) provides the Corporation the flexibility needed in extraordinary circumstances addressed by suspensions to suspend funding before corrective action has taken place. However, the Corporation must identify any corrective action the recipient can undertake to avoid or end the suspension in the proposed determination.

Paragraph (a) of this section authorizes the Corporation to issue a written proposed determination to suspend funding to the recipient. The use of ''proposed'' before ''determination'' is intended to clarify that the Corporation has not made a prejudgment but rather has reason to believe that grounds exist for a suspension. The recipient then has the burden to show cause why the suspension should not take place. The Committee seeks comments on whether the language in the rule adequately describes this intent.

The proposed determination is required to state the grounds for the action, identify the relevant facts and documents underlying the determination, specify any corrective action the recipient may take, and advise the recipient of its right to submit written materials in response to the proposed determination and to request an informal hearing with the Corporation. Paragraph (c) requires the Corporation to consider all materials and oral evidence presented under this section and, if the Corporation thereafter determines that grounds for a suspension exist, the Corporation may issue a written final determination to suspend and shall provide that determination to the recipient.

Paragraph (e) permits the Corporation to rescind or modify the terms of the final determination to suspend and, after providing written notice to the recipient, reinstate the suspension without any additional proceedings under this part. Paragraph (e) also states that, except for suspensions for the failure of a recipient to complete an audit consistent with the guidance promulgated by the Office of Inspector General, a suspension shall not exceed 30 days, unless there is agreement between the recipient and the Corporation to extend the suspension for up to 60 days. This reflects the presumption that a suspension of too long a duration would likely endanger a recipient's ability to function. A suspension is intended to be used for extraordinary circumstances when prompt intervention is likely to bring about immediate corrective action. At some point, the Corporation should either end the suspension because the problem is solved and is unlikely to reoccur, or because the recipient is seriously attempting to come into compliance; or initiate a termination process under part 1606.

Paragraph (f) implements section 509 of Public Law 104–134, which requires that suspensions for failure to have an acceptable audit should last until the recipient has completed an acceptable audit.

Section 1623.5 Time Extension and Waiver

This section provides that extensions of time may be provided for good cause, except for the time limits in § 1623.4(e). It also permits any other provision of this part to be waived or modified by agreement of the recipient and the Corporation for good cause.

Section 1623.6 Interim Funding

Generally, this section is the same as in the current rule. It requires the Corporation to continue funding the recipient at the current level during suspension proceedings. This is necessary to prevent an injustice if the proceedings reveal that a suspension is not in order and to ensure the continued availability of legal services to the poor in the recipient's service area. Paragraph (b) provides that a failure of the Corporation to meet a time requirement does not preclude the Corporation from suspending a recipient's grant or contract with the Corporation. See *Brock* v. *Pierce County,* 476 U.S. 253 (1986).

List of Subjects in 45 CFR Part 1623

Administrative practice and procedures, legal services.

For reasons set forth in the preamble, LSC proposes to revise 45 CFR part 1623 to read as follows:

PART 1623—SUSPENSION PROCEDURES

Sec.
1623.1 Purpose.
1623.2 Definition.
1623.3 Grounds for suspension.
1623.4 Suspension procedures.
1623.5 Time extensions and waiver.
1623.6 Interim funding.

Authority: 42 U.S.C. 2996e (b)(1); Pub. L. 104–134, 110 Stat. 1321, sec. 509; Pub. L. 105–119, 111 Stat. 2440, sec. 501(b).

§ 1623.1 Purpose.

The purpose of this rule is to:

(a) Ensure that the Corporation is able to take prompt action when necessary to safeguard LSC funds or to ensure the compliance of a recipient with applicable provisions of law, or a rule, regulation, guideline or instruction issued by the Corporation, or the terms and conditions of a recipient's grant or contract with the Corporation; and

(b) Provide procedures for prompt review that will ensure informed deliberation by the Corporation when it has made a proposed determination that financial assistance to a recipient should be suspended.

§ 1623.2 Definition.

For the purposes of this part, *suspension* means an action taken during the term of the recipient's current grant or contract with the Corporation that withholds financial assistance to a recipient, in whole or in part, until the end of the suspension period pending corrective action by the recipient or a decision by the Corporation to initiate termination proceedings.

§ 1623.3 Grounds for suspension.

(a) Financial assistance provided to a recipient may be suspended when the Corporation determines that there has been a substantial violation by the recipient of an applicable provision of law, or a rule, regulation, guideline or instruction issued by the Corporation, or a term or condition of the recipient's current grant or contract with the Corporation; and the Corporation has reason to believe that prompt action is necessary to:

(1) Safeguard LSC funds; or

(2) Ensure immediate corrective action necessary to bring a recipient into compliance with an applicable provision of law, or a rule, regulation, guideline or instruction issued by the Corporation, or the terms and conditions of the recipient's grant or contract with the Corporation.

(b) A determination of whether there has been a substantial violation for the purposes of paragraph (a) of this section

will be based on consideration of the following criteria:

(1) The importance and number of restrictions or requirements violated;

(2) The seriousness of the violation;

(3) The extent to which the violation is part of a pattern; and

(4) Whether the violation was intentional.

(c) Financial assistance provided to a recipient may also be suspended by the Corporation pursuant to a recommendation by the Office of Inspector General when the recipient has failed to have an acceptable audit in accordance with the guidance promulgated by the Corporation's Office of Inspector General.

§ 1623.4 Suspension procedures.

(a) When the Corporation has made a proposed determination, based on the grounds set out in § 1623.3, that financial assistance to a recipient should be suspended, the Corporation shall serve a written proposed determination on the recipient. The proposed determination shall:

(1) State the grounds and effective date for the proposed suspension;

(2) Identify, with reasonable specificity, any facts or documents relied upon as justification for the suspension;

(3) Specify what, if any, corrective action the recipient can take to avoid or end the suspension;

(4) Advise the recipient that it may request, within 5 days of receipt of the proposed determination, an informal meeting with the Corporation at which it may attempt to show that the proposed suspension should not be imposed; and

(5) Advise the recipient that, within 10 days of its receipt of the proposed determination and without regard to whether it requests an informal meeting, it may submit written materials in opposition to the proposed suspension.

(b) If the recipient requests an informal meeting with the Corporation, the Corporation shall designate the time and place for the meeting. The meeting shall occur within 5 days after the recipient's request is received.

(c) The Corporation shall consider any written materials submitted by the recipient in opposition to the proposed suspension and any oral presentation or written materials submitted by the recipient at an informal meeting. If, after considering such materials, the Corporation determines that the recipient has failed to show that the suspension should not become effective, the Corporation may issue a written final determination to suspend financial assistance to the recipient in whole or in part and under such terms and conditions the Corporation deems appropriate and necessary.

(d) The final determination shall be promptly transmitted to the recipient in a manner that verifies receipt of the determination by the recipient, and the suspension shall become effective when the final determination is received by the recipient or on such later date as is specified therein.

(e) The Corporation may at any time rescind or modify the terms of the final determination to suspend and, on written notice to the recipient, may reinstate the suspension without further proceedings under this part. Except as provided in paragraph (f) of this section, the total time of a suspension shall not exceed 30 days, unless the Corporation and the recipient agree to a continuation of the suspension for up to a total of 60 days without further proceedings under this part.

(f) When the suspension is based on the grounds in § 1623.3(c), a recipient's funds may be suspended until an acceptable audit is completed.

§ 1623.5 Time extensions and waiver.

(a) Except for the time limits in § 1623.4(e), any period of time provided in this part may be extended by the Corporation for good cause. Requests for extensions of time shall be considered in light of the overall objective that the procedures prescribed by this part ordinarily shall be concluded within 30 days of the service of the proposed determination.

(b) Any other provision of this part may be waived or modified by agreement of the recipient and the Corporation for good cause.

§ 1623.6 Interim funding.

(a) Pending the completion of suspension proceedings under this part, the Corporation shall provide the recipient with the level of financial assistance provided for under its current grant or contract with the Corporation.

(b) Failure by the Corporation to meet a time requirement of this part shall not preclude the Corporation from suspending a recipient's grant or contract with the Corporation.

Dated: May 29, 1998.

Victor M. Fortuno,

General Counsel.

[FR Doc. 98–14773 Filed 6–3–98; 8:45 am]

BILLING CODE 7050–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–98–3881; Notice 01]

RIN 2127–AH21

Federal Motor Vehicle Safety Standards; Transmission Shift Lever Sequence, Starter Interlock, and Transmission Braking Effect

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Request for comments.

SUMMARY: NHTSA is considering whether to issue a proposal to amend the Federal motor vehicle safety standard on transmission shift lever sequence to add requirements for vehicles without conventional mechanical transmission shift levers. This is in response to a petition received from BMW of North America, Inc. (BMW). BMW has been exploring the possibility of producing vehicles with electronically-controlled transmissions that do not use the conventional mechanical lever that, when engaged, places the transmission in the desired gear. Rather than conventional shift levers, these systems would employ shift mechanisms such as a rotary switch, keypad, touch screen, joystick, voice activation, or some other method. Some of these designs, however, do not comply with requirements in Standard No. 102.

DATES: Comments must be received on or before September 2, 1998.

ADDRESSES: Comments must refer to the docket and notice numbers cited at the beginning of this notice and be submitted to: Docket Management, Room PL–401, 400 Seventh Street SW., Washington, DC 20590. It is requested, but not required, that two copies of the comments be provided. The Docket Section is open on weekdays from 10:00 a.m. to 5 p.m.

FOR FURTHER INFORMATION CONTACT: For non-legal issues: 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 and his facsimile number is (202) 366–4329.

For legal issues: Ms. Dorothy Nakama, Rulemaking Division, Office of Chief Counsel, NHTSA, 400 Seventh Street, SW, Washington, DC 20590. Ms. Nakama's telephone number is (202)

366–2992 and her facsimile number is (202) 366–3820.

SUPPLEMENTARY INFORMATION:

Background of Standard No. 102

Standard No. 102's purpose is to reduce deaths and injuries resulting from misshifting. Since 1968, the standard has ensured against misshifting by specifying the sequence in which gears for automatic transmissions must be selected. Paragraph S3.1.1 of the standard, ''Location of transmission shift lever positions on passenger cars,'' requires that ''[a] neutral position shall be located between forward drive and reverse drive positions. If a steering-column-mounted transmission shift lever is used, movement from neutral position to forward drive position shall be clockwise. If the transmission shift lever sequence includes a park position, it shall be located at the end, adjacent to the reverse drive position.'' That is, the gear selection is required to be in the park, reverse, neutral, drive, and low (PRNDL) sequence.

Under these requirements, the driver must shift serially to get from one position to another. For instance, if a vehicle is in park, to get to drive, the driver must move the shift lever serially through two positions: reverse, neutral, and then to drive. Moreover, with the neutral position required to be between reverse and drive, this further ensures that no mistakes in selection will be made. The neutral position provides a buffer zone between forward and reverse. Therefore, if there was a mistake in shifting, it is more than likely that the vehicle would end up in neutral instead of drive or reverse.

The main type of misshifting the standard seeks to prevent is when a driver initiates forward or rearward motion from a standstill. For example, if a driver intends to leave a parking space by placing a vehicle in reverse and accidentally places the vehicle in drive, there is a potential for pedestrians or other vehicles to be struck. Because of the required shift lever sequence, it becomes less likely due to the standardized sequence of gear positions a driver must always follow to get to the desired gear. Further, the vast majority of gear changes are performed while the vehicle is not in motion.

BMW's Petition

BMW petitioned the agency to amend Standard No. 102 on November 19, 1997. As stated above, it is considering manufacturing electronically-controlled transmissions that would not use the conventional mechanical shift lever as current vehicles with both electronically-controlled and mechanically-controlled transmissions do. The systems could use unconventional methods of initiating shift changes (rotary switches, keypads, touch screens, joysticks, voice activation, or other methods). For a mechanically-controlled transmission, a shift lever is moved, which activates a linkage or cable that positions the transmission's linkage in the desired gear. When the shift mechanism on an electronically controlled system is moved, it sends an electric signal to a control on the transmission to place the transmission in the desired gear.

Standard No. 102 establishes four primary requirements for vehicles with automatic transmissions. First, it specifies a shift lever sequence for automatic transmissions and requires a neutral position to be located between forward drive and reverse drive positions. Second, it requires a transmission braking effect for vehicles having more than one forward transmission gear ratio. Third, it requires that the engine starter be inoperative when the transmission is in a forward or reverse drive position. Fourth, it requires that, for shift lever sequences with a park position, identification of shift lever positions shall be displayed in view of the driver.

BMW stated in its petition that the requirements to provide a transmission braking effect and a starter interlock when the transmission is in a forward or reverse drive position do not pose any problems for their newer design. Thus, the focus of BMW's petition and this request for comments is on the first and fourth requirements identified above—the shift lever sequence for automatic transmissions and the requirement that the shift lever sequence be displayed in view of the driver.

With respect to the shift lever sequence, BMW indicated that future shifting designs, especially joysticks, could move along two axes, instead of the single axis associated with conventional shift levers. That is, instead of moving around the steering column or forward and backward like conventional shift levers, joysticks and keypads shift by moving forward and backward and left and right. Adding this second axis of movement would make compliance with the shift lever sequence requirement and the requirement to display the shift lever sequence, in the words of BMW's petition, ''inappropriate, impracticable, and sometimes impossible.''

BMW also believes that because the shift lever sequence requirements refer to shift ''levers,'' Standard No. 102 would not apply to shifting mechanisms that do not employ a mechanical lever. It asserts that the standard was based on mechanical shift levers and its requirements were written to endorse the then-current industry practice of using a shift lever even though other means of gear selection (e.g., push buttons) had existed in the past and could likely be reintroduced in the future. It states that, ''to avoid 'out-lawing' such other designs, the wording in these requirements was intentionally chosen to clearly apply only to transmissions with *mechanical shift levers.*''

BMW asked that three requirements be added to Standard No. 102 that relate to systems without mechanical transmission levers. Its suggested regulatory text is as follows:

S3.1.5 *Systems without mechanical transmission levers.*

S3.1.5.1 The engine starter shall be inoperative whenever a forward or reverse drive gear is engaged.

S3.1.5.2 Each transmission gear available for selection, how each available transmission gear can be selected, and which gear has been selected shall be displayed in view of the driver whenever any of the following conditions exist:

(a) The ignition is in a position where the transmission can be shifted.

(b) The transmission is not in park.

S3.1.5.3 Each system shall prohibit the following:

(a) shifting from drive to reverse and from reverse to drive at any speed above five kilometers per hour (km/h) (3.1 miles per hour (mph)).

(b) shifting into park from any gear at any speed above three km/h (1.9 mph).

NHTSA welcomes this petition to reexamine whether there is a continuing need for the shift lever sequence in Standard No. 102. This was one of the original safety standards which took effect on January 1, 1968. The agency believes it is useful to consider carefully in 1998 whether the changes over the past 30 years have eliminated the need for the shift lever sequence requirement, or whether that requirement is now imposing a needless burden on new technologies. To facilitate this review, NHTSA has carefully looked at the purpose of the shift lever sequence. The agency would now like to have a public dialogue to gather additional information and opinions about whether the shift lever sequence requirements in Standard No. 102 impose unforeseen design burdens on manufacturers' efforts to use new technologies and whether there is a continuing safety benefit for the public from the shift lever sequence requirements.

Standard No. 102's Applicability

Although the standard mentions only shift ''levers,'' the agency's intention was not to have the standard apply only to systems with mechanical levers such as BMW asserts. The standard specifies shift levers because they were the conventional type of shift mechanism at the time the standard was established in the late 1960's. The agency's intent was to reduce the likelihood of shifting errors by standardizing the shift lever sequence. As with other standards, the agency's goal is not to limit innovations in vehicular systems by establishing requirements or to establish design restrictive requirements unless that is necessary for establishing the required safety goal.

For example, Standard No. 124, *Accelerator control systems*, was written with respect to mechanical accelerator control systems. This is because at the time Standard No. 124 was established, the only type of accelerator controls that existed were of a mechanical type. When promulgated, the definitions and requirements were easy to understand and apply because their language was strongly influenced by the design of mechanical systems. However, with the advent of electronic accelerator control systems, it did not mean that the standard did not apply to them. In the case of Standard No. 124, the purpose was to provide a means for reducing deaths and injuries resulting from a loss of control of a moving vehicle's engine, due to malfunctions in the accelerator control system. That is, the system should return a vehicle's throttle to the idle position if the driver removes the actuating force (removes foot from accelerator pedal or disengages cruise control) and when there is a severance or disconnection in the system. This can be accomplished whether the system is electronic or mechanical.

The same is true for Standard No. 102. The standard does not differentiate between whether a transmission is mechanically- or electronically-controlled. There are a number of vehicles on the market today that have electronically-controlled transmissions that employ conventional mechanical shift levers to which the standard applies. The sequence and mechanism of gear selection is the issue at hand and whether this means should remain standardized as is, or whether other aspects need to be standardized. Further, if the agency determines that the existing standardization is no longer appropriate and amends the standard to accommodate other types of shift mechanisms, a decision needs to be made as to what other requirements, if any, need to be established to maintain the level of safety that has existed with the current requirements for the last thirty years.

Discussion of Issues

Shift Lever Sequence

Having these requirements in place for over thirty years has ingrained them in the minds of the vast majority of drivers. Because of the familiarity with the required gear positions, it is not uncommon for a driver of a vehicle with an automatic transmission to shift into a desired gear without looking at the shift lever or display. The universality of these controls allows this behavior without necessarily degrading motor vehicle safety. Drivers know where certain gear positions are in relation to the others. As stated above, to get from the park position to the drive position, a driver would move the control in a clockwise or rearward, serial sequence to go through the reverse and neutral positions. However, if shift levers were allowed to be significantly different as in some of the designs BMW has outlined, it is possible that a significant amount of misshifting would occur.

Other than the rotary switch, the shift mechanisms that BMW has outlined would allow non-serial selection of gears. Shift mechanisms such as joysticks, push buttons, keypads, and touch screens would allow the driver to shift from gear to gear in any sequence. For example, if a vehicle is equipped with push buttons, a keypad, or a touch screen for gear selection, the driver would simply depress a button or touch a screen at the position for the desired gear, regardless of the currently selected gear position. Therefore, one could change gears in any sequence. Regarding the joystick design, the driver must move a *mechanical lever* from its center position either up for drive, down for reverse, left for park, or right for neutral. After the lever is moved toward the desired gear selection, it returns back to its center position.

Some of the systems BMW mentioned could theoretically be changed so that they comply with the standard. For systems employing push button, keypad, or touch screen shift mechanisms, it is possible to envision a series of interlocking buttons or touch screen positions which would operate only in a specific serial sequence. That is, to place the vehicle in drive from park, first one would have to push the reverse button, neutral button, and the drive button in sequence. While we believe this would meet the standard, we understand it is unlikely a manufacturer would opt for such a cumbersome shift mechanism.

These non-serial methods of shifting could increase the likelihood of misshifting. In situations where the vehicle is being operated at night or if the driver's attention is focused on a more critical area, the driver may change gears without looking at the shift lever or display. Some drivers may shift gears without looking for no other reason than their familiarity with the system. Because the gear positions could be selected randomly in most of the systems BMW has outlined, not looking at the shift mechanism or display when shifting would allow less room for error than with conventional systems.

Another scenario which could increase the likelihood of misshifting is when a driver is operating a rental car. In this situation, the driver may not be familiar with the vehicle's controls and displays. If the driver was not accustomed to an unconventional shift mechanism, misshifting could occur. Also, the agency has received numerous letters regarding confusion with the placement of controls and displays on rental cars. These letters express some of the public's frustration with the lack in standardization of placement of controls and displays. Allowing unconventional shift mechanisms could add to already existing confusion among some drivers.

One possible method to lessen the likelihood of misshifting is to require that the brake pedal be depressed to initiate a change in gears. In this case, the only gear changes that could be made without depressing the brake would be when switching between drive and the lower forward gears. This may eliminate many potential problems with drivers not looking at the shift mechanisms while changing gears. Even if a driver did not look at the shift mechanism or display while changing gears, after completing this action while the brake pedal is depressed, the driver would feel a vehicle ''tug'' towards the selected gear's direction. Therefore, if a driver intended to place the transmission in the drive position and the vehicle tugged in the reverse direction, the driver probably would immediately know a mistake had been made. Further, it could eliminate potential problems with voice activated systems. Saying key words such as ''drive'' or ''reverse'' would not change the gear without the driver depressing the brake and thus being in control of the vehicle. Brake pedal application while shifting might, however, be problematic under certain driving

conditions such as rocking a vehicle stuck in snow.

BMW briefly mentions voice activated gear selection in its petition. There would be a multitude of safety issues if these systems were used. For example, if some of the activating words were used in conversation while driving, an undesired shift could take place. Also, if someone were to shout out a command outside of a parked, idling vehicle, the transmission could be shifted into a forward or reverse gear which would cause the vehicle to move. BMW did not suggest any requirements to forestall such an event.

BMW did describe a non-lever shift mechanism that would meet the current requirements of the standard. The rotary switch would be acceptable because the driver would have to turn a dial-like mechanism through the PRNDL sequence to get to the desired gear. To get the transmission into the drive position, one would have to turn the rotary switch through the reverse and neutral positions. This serial selection of gears would allow the driver to shift through the standardized gear sequence.

As stated above, the type of misshifting that the standard seeks to prevent is when a vehicle is at a standstill. BMW suggests requirements to deter shifting while the vehicle is in motion. The requirements that BMW suggests appear to center mainly on the protection of the transmission. However, BMW's suggested requirements do not appear to address how misshifting could be prevented if the vehicle is not in motion, the main purpose of the standard.

Display of Shift Lever Sequence

Standard No. 102 also specifies requirements for the display of the shift lever sequence. It requires that identification of the shift lever positions including the positions in relation to each other and the position selected be displayed in view of the driver when either the ignition is in a position where the transmission can be shifted or when the transmission is not in the park position. If the vehicle does not have a park position, identification of the shift lever positions, including the positions in relation to each other and the position selected, shall be displayed in view of the driver whenever the ignition is in a position in which the engine is capable of operation. The purpose of these requirements is to ensure that the vehicle operator is aware of which gear has been selected as well as its relation to the other shift positions. This reduces the likelihood of misshifting.

BMW stated in its petition that, because of the physical nature of future transmissions, meeting the aforementioned display requirements could be ''inappropriate, impracticable, and sometimes impossible.'' BMW does not elaborate further on why the display requirements would be difficult to comply with. However, BMW believes the future transmission designs can satisfy the standard's intended purpose: to reduce the likelihood of shifting errors.

As stated previously, the shift lever requirements in the standard have been around for 30 years. Drivers are accustomed to the requirements for the display of the shift lever sequence. The agency believes that, if the currently-required display was changed, drivers could become confused. This could lead to them making a mistake in selecting the desired gear. Further, this problem could be exacerbated in rental cars where the driver is not familiar with the controls and displays.

Starter Interlock

Paragraph S3.1.3 of the standard states that ''[t]he engine starter shall be inoperative when the transmission *shift lever* is in a forward or reverse drive position'' (emphasis added). Because the purpose of this notice is to seek comments on permitting other types of shift mechanisms, some of which are not considered shift ''levers,'' the agency would like to clarify that our intention is not to remove the requirement for a starter interlock on vehicles which do not have shift lever. If some type of shift mechanism other than a shift lever, such as a rotary switch, is permitted, the starter interlock requirements would have to be amended to incorporate this change.

Questions for Comment

In determining the merits of BMW's petition and discussion of the issues, the comments should not focus on the type of transmission that is involved, i.e., whether it is electronically- or mechanically-controlled. This is irrelevant because it does not affect the ability to comply with the standard. There are compliant vehicles on the road today which have both types of transmissions. The issue we are interested in receiving comments on is the effect on motor vehicle safety of a change in standardization of the shift lever sequence (PRNDL) to a non-serial type of gear selection.

1. Should Standard No. 102 be amended to permit transmission shift mechanisms which allow changing gears in a non-serial manner, e.g., keypads, touch screens, push buttons, voice activation, etc.? If these non-serial shift mechanisms were allowed, what types of restrictions, if any, should be placed on them to reduce the likelihood of misshifting? Please be specific.

2. Should the standard specify maximum speeds at which the transmission can be shifted, (except when switching between drive and lower forward gears) presuming that additional safety concerns exist that could be resolved by preventing shifting while a vehicle is in motion? If so, are the maximum speeds and the vehicle conditions that BMW has suggested in its petition appropriate? If not, what speeds and conditions would be appropriate?

3. Should there be a requirement that the brake pedal be depressed, or any other action, to achieve a failsafe condition to occur in order to initiate a change in gears (except when switching between drive and lower forward gears)?

4. If non-serial shift mechanisms were allowed, how should the display requirements be altered to accommodate them?

5. Although BMW did not raise any issues regarding transmission braking effect, the agency would like to get comments on this requirement. The standard states that ''[i]n vehicles having more than one forward transmission gear ratio, one forward drive position shall provide a greater degree of engine braking than the highest speed transmission ratio at vehicle speeds below 40 kilometers per hour.'' The only way the standard permits this requirement to be met is through the transmission braking effect. Should the requirement be less specific by allowing other means of slowing down the vehicle when the transmission is shifted into a lower forward gear? This could be accomplished when downshifting the transmission by controlling the vehicle's brake system via a traction control system, using a drive line retarder, using regenerative braking, or some other method.

Rulemaking Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

This request for comment was not reviewed under Executive Order 12866 (Regulatory Planning and Review). NHTSA has analyzed the impact of this request for comment and determined that it is not ''significant'' within the meaning of the Department of Transportation's regulatory policies and procedures. The agency anticipates if a proposal and ultimately a final rule should result from this request for comment, new requirements would not be imposed on manufacturers with respect to currently regulated systems.

The request for comment seeks to determine whether shift mechanisms that employ a non-serial method of gear selection would degrade safety, and if so, could the standard be amended so as to allow for their safe inclusion in motor vehicles. If NHTSA decides to initiate rulemaking, it is NHTSA's intent that the rulemaking not impose any additional costs.

Procedures for Filing Comments

Interested persons are invited to submit comments on this request for comment. It is requested but not required that two copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential information regulation. 49 CFR part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received after the comment due date will be considered as suggestions for any future rulemaking action. Comments on the request for comment will be available for inspection in the docket. NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

Issued on: May 29, 1998.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 98–14832 Filed 6–3–98; 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: Finding on Petitions To Change the Status of Grizzly Bear Populations in the North Cascades Area of Washington and the Cabinet-Yaak Area of Montana and Idaho From Threatened to Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 12-month petition finding.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces a recycled 12-month petition finding for two petitions to amend the List of Threatened and Endangered Wildlife. The Service finds that reclassification of grizzly bears (*Ursus arctos horribilis*) in the North Cascades Recovery Zone of Washington and Cabinet-Yaak Recovery Zone of Montana and Idaho from threatened to endangered status remains warranted but precluded.

DATES: The finding announced in this document was approved on June 1, 1998.

ADDRESSES: Questions or comments concerning this finding should be sent to U.S. Fish and Wildlife Service, Grizzly Bear Recovery Coordinator, University Hall 309, University of Montana, Missoula, Montana 59812. The petition, finding, and supporting data are available for public inspection by appointment during normal business hours at the above office.

FOR FURTHER INFORMATION CONTACT: Dr. Christopher Servheen, Grizzly Bear Recovery Coordinator (see **ADDRESSES** above) at telephone (406) 243–4903.

SUPPLEMENTARY INFORMATION: Section 4(b)(3)(A) of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*), requires that for any petition to revise the Lists of Endangered and Threatened Wildlife and Plants that contains substantial scientific and commercial information, the Service make a finding within 12 months of the date of the receipt of the petition on whether the petitioned action is (a) not warranted, (b) warranted, or '' warranted, but precluded. Section 4(b)(3)(C) requires that petitions for which the requested action is found to be warranted but precluded should be treated as though resubmitted on the date of such finding, i.e., requiring a subsequent finding to be made within 12 months. The Service announces a new 12-month finding on two petitions requesting the reclassification of grizzly bears from threatened to endangered status.

The Service received a petition dated March 13, 1990, from the Humane Society of the United States, Greater Ecosystem Alliance, North Cascades Audubon Society, Kittitas Audubon Society, Pilchuck Audubon Society, Skagit Alpine Club, North Cascades Conservation Council, and Carol Rae Smith. The petition requested the Service to reclassify the grizzly bear in the North Cascades area of Washington State from threatened to endangered. The Service made a 90-day finding that the petition presented substantial information indicating that the requested action may be warranted. The Service announced the 90-day finding in the **Federal Register** on August 7, 1990, (55 FR 32103) and initiated a status review. The Service issued a 12-month finding that the petitioned action was warranted but precluded on July 24, 1991 (56 FR 33892).

A petition dated January 16, 1991, was received from Mr. D.C. Carlton on January 28, 1991. The petition requested the Service to reclassify the grizzly bear in the Selkirk ecosystem of Idaho and Washington; the Cabinet-Yaak ecosystem of Montana and Idaho; and the North Cascades ecosystem of Washington from threatened to endangered. A petition dated February 4, 1991, was received from the Fund for Animals, Inc., on February 7, 1991. The petition requested the Service to reclassify the grizzly bear in the Selkirk ecosystem of Idaho and Washington; the Cabinet-Yaak ecosystem of Montana and Idaho; the Yellowstone ecosystem of Montana, Wyoming, and Idaho; and the Northern Continental Divide ecosystem of Montana from threatened to endangered. On April 20, 1992 (57 FR 14372) the Service issued a 90-day finding that there was not substantial information to warrant the reclassification of the grizzly bear in the Yellowstone and Northern Continental Divide ecosystems, but there was substantial information to indicate that reclassification in the Selkirk and Cabinet-Yaak ecosystems may be warranted. At the same time, the Service initiated a status review. On February 12, 1993 (58 FR 8250) the Service issued a 12-month finding that reclassification in the Cabinet-Yaak ecosystem was

warranted but precluded and that reclassification in the Selkirk ecosystem was not warranted.

Section 4(b) of the Act states that the Service may make warranted but precluded findings only if it can demonstrate that (1) an immediate proposed rule is precluded by other pending proposals, and that (2) expeditious progress is being make on other listing actions. On September 21, 1983 (48 FR 43098), the Service published in the **Federal Register** its priority system for listing species under the Act. The system considers magnitude of threat, immediacy of threat, and taxonomic distinctiveness in assigning species numerical listing priorities on scale of one through twelve. The two grizzly bear populations discussed here have been assigned a listing priority of 6.

The magnitude of the threat to the continued existence of the North Cascades and Cabinet-Yaak grizzly bear populations remains high. The reasons for this are detailed in the Service's 12-month petition findings in 1991 for the North Cascades (56 FR 33892) and in 1993 for the Cabinet-Yaak (58 FR 8250). However, grizzly bear habitat protection in the North Cascades and the Cabinet-Yaak areas is facilitated by Federal ownership of most of the land within both recovery zones. In the North Cascades, large portions of the recovery zone are designated wilderness or lie within North Cascades National Park. In the Cabinet-Yaak there is some designated wilderness and additional proposed wilderness. All actions on Federal lands which may affect grizzly bears undergo consultation under section 7 of the Act. The Grizzly Bear Recovery Plan was revised in 1993 (U.S. Fish and Wildlife Service 1993) and a supplemental chapter specific to the North Cascades was completed in 1997 (U.S. Fish and Wildlife Service 1997). These plans outline grizzly bear habitat and population management policies to be applied in the North Cascades and the Cabinet-Yaak.

On private land, the northern portion of the planning area for the Plum Creek Timber Company Habitat Conservation Plan (HCP) is within the North Cascades grizzly bear recovery area. After approval of the HCP, an incidental take permit under Section 10(a)(1)(B) of the Act was issued to Plum Creek Timber Company in June of 1996. At present, grizzly bears are not known to be present in the HCP planning area. Plum Creek HCP calls for implementation of a series of Best Management Practices that will address two major habitat-related concerns for grizzly bears: open road density and habitat diversity. Best Management Practices will include restriction of public use, reduction of open road density, maintenance of visual screening along open roads, and prohibition of firearms in company vehicles. Once the Service verifies that grizzly bears have recolonized the area, additional practices will be implemented to address road location, road closures, cover, size of openings, and timing of operations.

Potential threats to the continued existence of the grizzly bear populations in both recovery zones include low numbers of individuals, alteration of habitat, and human intrusion into grizzly habitat. Cumulative impacts of recreation, timber harvest, mining, and other forest uses with associated road construction can reduce the amount of effective habitat for grizzly bears. Potential threats to grizzly bear habitat and the animals remaining in the North Cascades and the Cabinet-Yaak areas persist, but are nonimminent. Prior to this notice, the Service reviewed the status of the finding on the Cabinet-Yaak population in September 1992 and March 1996, and the status of the finding on the North Cascades population in March 1993. In these reviews, the Service determined that the threats to the grizzly bear populations in the North Cascades and the Cabinet-Yaak ecosystems remain of high magnitude and of a nonimminent nature and that a listing priority of 6 for the petitioned reclassification remained appropriate.

On December 6, 1996, the Service adopted a listing priority guidance for Fiscal Year 1997 (61 FR 64475) and this guidance was extended on October 23, 1997. Final listing priority guidance for Fiscal Year 1998 and Fiscal Year 1999 was published in the **Federal Register** on May 8, 1998 (63 FR 25502). Both the Fiscal Year 1997 and 1998/1999 guidance described a multi-tiered listing approach that assigns relative priorities to listing actions to be carried out under Section 4 of the Act. This guidance supplements, but does not replace the 1983 listing priority guidelines.

Grizzly bear reclassification from threatened to endangered status in the North Cascades and Cabinet-Yaak recovery zones falls into Tier 3 under Fiscal Year 1997 guidance and under Tier 2 in the Fiscal Year 1998 guidance. In both guidance documents, determinations and processing of proposed listings to add new species to the lists of threatened and endangered species receives higher priority than reclassifications of already listed species. Because the Service must devote listing funds to addressing high priority candidate species, preparation of a proposed rule to reclassify the grizzly bear in the North Cascades or Cabinet-Yaak ecosystems remains warranted but precluded by higher listing priorities.

Based on a review of the status and threats affecting the grizzly bear in the North Cascades and Cabinet-Yaak ecosystems, the Service finds that there is no information to indicate that a change in the listing priority of 6 is appropriate for either of these populations.

The Notice of Review of Plant and Animal Taxa published in the **Federal Register** on September 19, 1997 (62 FR 49397), provided a discussion of the expeditious progress made in the past year on listing decisions and recycling of petition findings throughout all regions of the Service. In that publication, the Service provided notice of review of 18 recycled petitions and described its progress in completing final listing actions for 152 taxa, proposed listing actions for 23 taxa, and proposed delisting action for one taxa.

Since publication of the 12-month finding on the Cabinet-Yaak ecosystem in 1993, the Service has made expeditious progress in making listing decisions on 14 candidate species in the Mountain-Prairie Region (Region 6). At the present time, there remain in Region 6 an additional 19 candidate species with listing priority numbers of 1–5. These listing priority numbers are higher than the listing priority number of 6 given to reclassification of the grizzly bear in the North Cascades and the Cabinet-Yaak ecosystems.

The Service reaffirms that both the North Cascades and Cabinet-Yaak populations of grizzly bears continue to face threats of high magnitude that are nonimminent, and therefore are assigned listing priorities of 6. Work on species with a listing priority of 6 is precluded by work on species of a higher priority.

Author: The primary author of this document is Wayne Kasworm, U.S. Fish and Wildlife Service, Missoula, Montana (see **ADDRESSES** above).

Authority: The authority for this action is the Endangered Species Act (16 U.S.C. 1531 *et seq.*)

References Cited

U.S. Fish and Wildlife Service. 1993. Grizzly bear recovery plan. Missoula, Montana. 181 pp.

U.S. Fish and Wildlife Service. 1997. Grizzly bear recovery plan supplement: North Cascades Ecosystem Recovery Plan Chapter. Missoula, Montana. 28 pp.

Dated: June 1, 1998.

Jamie Rappaport Clark,

Director, Fish and Wildlife Service.

[FR Doc. 98–14974 Filed 6–3–98; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 222, 226, and 227

[I.D. 022398C]

Endangered and Threatened Species; Extension of Comment Periods; and Notice of Public Hearing on Proposed Listing and Proposed Designation of Critical Habitat for West Coast Chinook, Chum, and Sockeye and on Proposed Listing of West Coast Steelhead

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

ACTION: Proposed rule; public hearing and extension of public comment periods.

SUMMARY: NMFS is extending the public comment periods and a public hearing will be held on the proposed listings and designations of critical habitat for west coast chinook (*Oncorhynchus tshawytscha*), sockeye (*Oncorhynchus nerka*), and chum (*Oncorhynchus keta*) salmon and on the proposed listings of west coast steelhead (*Oncorhynchus mykiss*). NMFS has received a request for an additional public hearing to allow further opportunity for the public to participate in the exchange of information and opinion among interested parties and to provide oral and written testimony. NMFS, finding the request reasonable, has scheduled a public hearing and extended the public comment periods to facilitate the reception of public views.

DATES: The meeting date is June 11, 1998, 6:00 p.m. - 9:00 p.m. Written comments on the proposed chinook, sockeye, and chum listing and critical habitat designation and on the proposed steelhead listing must be received by June 30, 1998.

ADDRESSES: The meeting will be held at Cunha Intermediate School, Kelly and Church Streets, Half Moon Bay, CA 94019. Written comments on the proposed chinook rule and requests for reference materials should be sent to Chief, Protected Species Division, NMFS, 525 NE Oregon Street, Suite 500, Portland, OR 97232-2737.

FOR FURTHER INFORMATION CONTACT: Garth Griffin, (503) 231-2005; Craig Wingert, (562) 980–4021; or Joe Blum, (301) 713–1401. Copies of the **Federal Register** documents cited herein and additional salmon-related materials are available via the Internet at www.nwr.noaa.gov.

SUPPLEMENTARY INFORMATION:

Background

On March 9, 1998 (63 FR 11482), NMFS issued a proposed rule to list and designate critical habitat for the California Central Valley, spring-run and the Washington Upper Columbia River, spring-run Evolutionarily Significant Units (ESUs) as endangered and for the Central Valley fall-run, the Southern Oregon and California Coastal, the Puget Sound, the Lower Columbia River, and the Upper Willamette River ESUs as threatened, and to redefine the Snake River fall-run chinook salmon ESU to include fall chinook salmon populations in the Deschutes River, to list this redefined ESU as threatened, and to revise its existing critical habitat under the Endangered Species Act (ESA). That proposal does not affect the current definition and threatened status of the listed Snake River fall chinook salmon ESU.

On March 10, 1998, NMFS published proposed rules listing the Hood Canal summer-run and the Columbia River Chum ESUs as threatened and designating critical habitat (63 FR 11774), listing the Ozette Lake sockeye as threatened and designating critical habitat (63 FR 11750), and listing the Middle Columbia River and the Upper Willamette River ESUs as threatened (63 FR 11798).

Proposed critical habitat for all four species' ESUs is their current freshwater and estuarine range, certain marine areas for chinook, and all waterways, substrate, and adjacent riparian zones below longstanding, impassible, natural barriers.

On April 7, 1998 (63 FR 16955), NMFS announced the schedule for 20 public hearings in the states of Washington, Oregon, Idaho, and California to discuss the chinook, chum, sockeye, and steelhead proposals. On May 18, 1998, NMFS received a request for an additional public hearing for the chinook proposal from the Pacific Coast Federation of Fishermen's Association. The reason given for the request was to allow the many fishermen who could be most effected by the chinook proposed rule and who were participating in the salmon fishery at the time of the public hearings in California the opportunity to comment firsthand with NMFS' officials. NMFS finds that the request reasonable and has scheduled a public hearing, and extended the public comment period for not only the chinook proposal but also the chum, sockeye, and steelhead proposals.

NMFS is soliciting specific information, comments, data, and/or recommendations on any aspect of the March 9 and 10, 1998, proposals from all interested parties. In particular, NMFS is requesting information or data as described in the **Federal Register** notice announcing the proposed listings and designations of critical habitat (see 63 FR 11482, 63 FR 11774, 63 FR 11750, and 63 FR 11798). This information is considered critical in helping NMFS make final determinations on the proposed listings and proposed designations of critical habitat. NMFS will consider all information, comments, and recommendations received during the comment period or at the public hearings before reaching a final decision.

Dated: May 28, 1998.

Rolland A. Schmitten,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 98–14870 Filed 6–3–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600

[Docket No. 980519132–8132–01; I.D.022498F]

RIN 0648–AK49

Magnuson-Stevens Act Provisions; List of Fisheries and Gear, and Notification Guidelines

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to establish a list of fisheries and fishing gear used in those fisheries under the authority of each Regional Fishery Management Council (Council), or the Secretary of Commerce (Secretary) for Atlantic highly migratory species. NMFS also proposes guidelines for determining when fishing gear or a fishery is sufficiently different from those listed to require notification of the appropriate authority. The list of fisheries and gear and the guidelines would apply only to fisheries and gear that occur within the

U.S. Exclusive Economic Zone (EEZ). This proposed rule would also provide a process by which fishermen can give notification to the appropriate Council or to the Secretary in order to use a gear that does not appear on the list of allowable gear types or to participate in an unlisted fishery. The proposed list and guidelines are required by the Magnuson-Stevens Fishery and Conservation and Management Act (Magnuson-Stevens Act), as amended by the Sustainable Fisheries Act (SFA).

DATES: Comments must be received by July 6, 1998.

ADDRESSES: Comments should be sent to Dr. Gary C. Matlock, Director, Office of Sustainable Fisheries, NMFS, 1315 East-West Highway, Silver Spring, MD 20910. Comments regarding the collection-of-information requirement contained in this rule should be sent to the above address and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 (Attention: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: Mark Millikin, NMFS, 301/713–2344.

SUPPLEMENTARY INFORMATION:

Background

This rulemaking is required by the Magnuson-Stevens Act (16 U.S.C. 1801 *et seq.*), as amended by the SFA, which was signed into law on October 11, 1996. Section 305(a) of the Magnuson-Stevens Act requires that the Secretary of Commerce (Secretary), not later than 18 months after the date of enactment of the SFA, publish in the **Federal Register**, after notice and an opportunity for public comment, a list of fisheries under the authority of each Council and all fishing gear used in such fisheries. This list is to be based on information submitted by the Councils under section 303(a) of the Magnuson-Stevens Act, and for Atlantic highly migratory pelagic fisheries to which section 302(a)(3) applies. In addition, the Magnuson-Stevens Act requires that the Secretary include with such a list guidelines for determining when fishing gear or a fishery is sufficiently different from those listed as to require fishermen or other individuals to notify a Council or the Secretary under section 305(a)(3).

List of Fisheries and Gear

As required by the SFA, the Councils submitted to NMFS a list of fisheries under their authority and the gear types used in each fishery. Fisheries under a Council's authority include those managed through a fishery management plan (FMP) and fisheries occurring within the geographical boundaries of that Council not managed through an FMP. In addition to these submissions, the List of Fisheries (LOF), as required by the Marine Mammal Protection Act (MMPA) and published on February 4, 1998 (63 FR 5748), was used as an additional source of information to ensure the list of fisheries and gear types was complete. The result is the proposed list of fisheries and allowable gear types for all fisheries within the EEZ.

NMFS is not aware of any Treaty Indian tribe or subsistence fisheries in the EEZ other than those listed in § 600.725(v) of this proposed rule. This action is not intended to supersede or otherwise affect exemptions that exist for subsistence or Native American harvest under Treaty Indian fisheries. However, NMFS is particularly interested in receiving public comment on this topic.

NMFS is considering the possibility that exceptions to the full 90-day waiting period, before using a new gear or participating in a new fishery, may be desirable under certain circumstances. NMFS invites comments on what conditions might warrant such an expedited review and approval of a new gear or fishery.

This rule is not intended to affect experimental fisheries conducted for a year or less elsewhere under Title 50, Chapter VI of the CFR.

NMFS requests comments regarding the completeness and accuracy of the proposed list of gear, definitions, and fisheries that may have been inadvertently left off the proposed list of fisheries and allowable gear. While gear types were included on the list, methods of gear deployment were not. This explains the absence of ''gears'' such as pelagic longline, jig, troll, bottom trawl, otter trawl, or drift gillnet on the proposed list. For example, ''jig'' and ''troll'' are considered deployment methods for hook-and-line gear, rather than gear types. Terms such as ''pelagic,'' ''bottom,'' and ''drift'' are modifiers that describe where in the water column the specific gear type is used. Also, ''hand gear'' is included on the list only under fisheries where it is the only allowed method of harvest—the Caribbean Queen Conch FMP and the Coral Reef FMPs in the South Atlantic and the Gulf of Mexico.

Definitions of each gear type were developed to describe and differentiate among gear used in the fisheries. In order to derive these definitions of gear types, existing definitions of gear types were obtained from fishery regulations in Title 50, Chapter VI of the CFR. Various sources were used to obtain general definitions for gear types not contained in regulations, including staff of the Councils, NMFS, and the Interstate Marine Fishery Commissions. Literature sources and manuals on gear types were also used to obtain gear definitions. The gear definitions are an important aspect of this activity because the definitions will determine the specific allowable gear in each fishery. In addition, the gear definitions have implications for the guidelines when determining if a particular gear type is sufficiently different from those listed so as to require notification under section 305(a) of the Magnuson-Stevens Act. General definitions would be added to section 600.10.

Prohibitions on Use of Unlisted Gear

Listed gear would be allowed to be used only in a manner that is consistent with existing laws or regulations. The list of fisheries and allowable gear would not, in any way, alter or supersede any definitions or regulations contained elsewhere in 50 CFR chapter VI. A person or vessel would be prohibited from engaging in fishing or employing fishing gear when such fishing or gear is prohibited or restricted by regulation under an FMP, as implemented elsewhere in 50 CFR chapter VI, or under other applicable law.

Procedures for Notification of New Gear or Fisheries

Based on comments received on this proposed rule, NMFS will publish a final rule containing the final list of fisheries and gear used in those fisheries. One hundred and eighty days after the publication of the final list of fisheries and gear, no individual or vessel may employ unlisted fishing gear or participate in an unlisted fishery without providing notification of intent to the appropriate Council, or to the Director, Office of Sustainable fisheries, NMFS (Director), in the case of Atlantic highly migratory species fisheries. Fishermen and vessels may not participate in unlisted fisheries or use unlisted gear for a period of 90 days following notification of the Council or the Director. Required information for adequate notification is listed in section 600.747(c)(3).

Species Other Than Atlantic Highly Migratory Species

After receiving notification regarding intended participation in an unlisted fishery or use of unlisted gear, a Council would begin consideration of the notification and immediately send a copy of the notification to the appropriate NMFS Regional Administrator (RA). If, after

consideration of the notification and accompanying information, a Council found that the new gear or fishery would not compromise the effectiveness of conservation and management efforts under the Magnuson-Stevens Act, it would recommend to the RA that the authorized list of fisheries and gear be amended, provide rationale and supporting analysis, and provide a draft proposed rule to amend the authorized list of fisheries and gear for publication in the **Federal Register**. If the Council found that the proposed new gear or fishery would be detrimental to conservation and management efforts, the Council would recommend to the RA that the authorized list of fisheries and gear not be amended, that a proposed rule not be published, give reasons for its recommendation for a disapproval, and might request NMFS to issue emergency or interim regulations, and begin preparation of an FMP or amendment to an FMP, if appropriate.

Based on the information provided in the notification and by the Council, NMFS would determine if the new gear or fishery would compromise the effectiveness of conservation and management efforts under the Magnuson-Stevens Act and whether to publish the proposed rule to amend the list of fisheries and gear.

If the initial determination were positive, NMFS would publish the proposed rule, with a 30-day comment period. Following the end of the comment period, NMFS would either approve or disapprove the change to the list based on the potential impacts on the effectiveness of conservation and management efforts. If approved, NMFS would publish a final rule revising the list, and notify the applicant of the final approval. If the use of the gear or participation in a fishery were determined to be detrimental to conservation and management efforts under the Magnuson-Stevens Act, the proposed addition to the list would be disapproved, NMFS would notify the applicant and the appropriate Council of the negative determination and the reasons for the determination, and might publish emergency or interim regulations in the **Federal Register** to prohibit or restrict the use of the unlisted gear or fishing in the unlisted fishery. Upon notification by NMFS that the proposed revision had been disapproved, the Council should begin preparation of an FMP or amendment to an FMP in order to provide permanent regulations relative to that gear type or fishery.

If the initial determination by NMFS were negative, because use of the gear or participation in the fishery were likely to compromise conservation and management efforts under the Magnuson-Stevens Act, and it were unlikely that additional new information would be gained from a public comment period, then NMFS would notify the applicant and the Council of the negative determination and the reasons for that determination, and might publish emergency or interim regulations in the **Federal Register** to prohibit or restrict the use of the unlisted gear or fishing in the unlisted fishery. The Council should then begin preparation of an FMP or an amendment to an FMP to provide permanent regulations relative to that gear type or fishery.

Atlantic Highly Migratory Species

Notification of intent to use an unlisted gear or participate in an unlisted fishery for Atlantic highly migratory species would be addressed to the Director. After receiving such notification, a determination would be made whether the new gear or new fishery would compromise the effectiveness of conservation and management programs and whether to publish a proposed rule to amend the list of gear and fisheries.

If the determination were positive, a proposed rule to amend the list of gear and fisheries would be published in the **Federal Register** for public comment. Following the end of the public comment period, NMFS would consider comments or new information received relative to the effect of the new gear or fishery on conservation and management programs, and would either approve or disapprove the proposed amendment. If approved, the applicant would be notified, and a final rule would be published amending the list of fisheries and gear. If after receiving public comment, NMFS disapproved the proposed amendment, the applicant would be notified of the disapproval, including reasons for the disapproval, and NMFS might publish emergency or interim regulations and subsequently develop or amend the FMP to prohibit or restrict the use of the unlisted gear or participation in the unlisted fishery.

If the initial determination were negative, NMFS would notify the applicant, including the reasons for the disapproval, and might publish emergency or interim regulations and subsequently develop or amend an FMP to prohibit or restrict the use of the unlisted gear or participation in the unlisted fishery.

Issues or Topics of Special Concern

NMFS specifically encourages comments on this proposed rule regarding the determination of what constitutes a ''different'' gear or fishery when an individual is attempting to use a new gear or enter a new fishery not on the proposed list of fisheries and gear. NMFS also requests comments regarding the types of information that would be required in the notification that would be submitted to the appropriate authority. The proposed list of gear by fishery under the Councils, or the Secretary in the case of Atlantic highly migratory species, appears at § 600.725.

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 rule will not have a significant impact on a substantial number of small entities. This action does not change the analyses already completed nor the conclusions made under the Regulatory Flexibility Act (RFA) for any gear that can be used in a fishery or gear that is prohibited seasonally, or year round, for any previous rulemakings for fisheries under 50 CFR parts 600, 622, 630, 640, 644, 648, 649, 654, 660, 678, and 679. NMFS' guidelines for preparation of economic analyses to comply with the RFA assume that a ''substantial number'' of small entities would generally be 20 percent of the total universe of small entities affected by the regulation. A regulation would have a ''significant impact'' on a substantial number of small entities if any of the following criteria are met: Annual gross revenues are reduced by more than 5 percent, total costs of production are increased by more than 5 percent, compliance costs for small entities are at least 10 percent higher than compliance costs as a percent of sales for large entities, or the action results in a cessation of business operations of 2 percent or more of small entities affected by the action. None of the aforementioned criteria were met by this action. The formalized list of fisheries currently in the EEZ and gears within those fisheries does not change any costs or revenues for members of the fishing industry. The new procedure that will be required before a fisherman may participate in a new fishery or employ a new gear in an existing fishery will affect only that small group of

individuals (about 20 per year) having to comply with the notification procedure because of reporting requirements associated with it. As a result, a regulatory flexibility analysis was not prepared for this action. Any future rule prohibiting or restricting use of gear or prosecution of a fishery will be analyzed in accordance with the RFA.

This rule contains a collection-of-information requirement subject to the Paperwork Reduction Act (PRA). This collection-of-information requirement has been submitted to OMB for approval. Public reporting burden for this collection of information is estimated to average 1 hour per response for Council notification of entry into a new fishery or use of a new gear in a current fishery, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Public comment is sought regarding: Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments regarding these burden estimates or any other aspect of this collection of information, including suggestions for reducing this burden, to NMFS and OMB (see **ADDRESSES**).

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

List of Subjects in 50 CFR Part 600

Administrative practice and procedure, Confidential business information, Fisheries, Fishing, Fishing vessels, Foreign relations, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Statistics.

Dated: May 27, 1998.

Rolland A. Schmitten,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 600 is proposed to be amended as follows:

PART 600—MAGNUSON-STEVENS ACT PROVISIONS

1. The authority citation for part 600 continues to read as follows:

Authority: 5 U.S.C. and 16 U.S.C. 1801 *et seq.*

2. In § 600.10, the definition for ''trawl'' is revised and new definitions for ''allowable chemical,'' ''bandit gear,'' ''barrier net,'' ''bully net,'' ''buoy gear,'' ''dip net,'' ''dredge,'' ''handline,'' ''hoop net,'' ''lampara net,'' ''longline,'' ''pair trawl,'' ''powerhead,'' ''purse seine,'' ''rod and reel,'' ''seine,'' ''slurp gun,'' ''snare,'' ''spear,'' ''tangle net dredge,'' ''trammel net,'' and ''trap,'' are added in alphabetical order to read as follows:

§ 600.10 Definitions.

* * * * *

Allowable chemical means a substance, generally used to immobilize marine life so it can be captured alive, that, when introduced into the water, does not take Gulf and South Atlantic prohibited coral and is allowed by Florida for the harvest of tropical fish.

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Bandit gear means vertical hook and line gear with rods that are attached to the vessel when in use. Lines are retrieved by manual, electric, or hydraulic reels.

Barrier net means a small-mesh net used to capture coral reef fishes.

Bully net means a circular frame attached at right angles to a pole and supporting a conical bag of webbing.

Buoy gear means fishing gear consisting of a float and one or more weighted lines suspended therefrom, generally long enough to reach the bottom. A hook or hooks are on the lines at or near the end. The float and line(s) drift freely and are retrieved periodically to remove catch and rebait hooks.

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Dip net means a small mesh bag, sometimes attached to a handle, shaped and framed in various ways. It is operated by hand or partially by mechanical power to capture the fish by a scooping motion.

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Dredge means a gear consisting of a mouth frame attached to a holding bag constructed of metal rings or mesh.

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Handline means fishing gear that is set and pulled by hand and consists of one vertical line to which may be attached leader lines with hooks.

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Hoop net means a frame, circular or otherwise, supporting a shallow bag of webbing and suspended by a line and bridles.

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Lampara net means a surround net with the sections of netting made and joined to create bagging. It is hauled with purse rings.

Longline means a line that is deployed horizontally and to which gangions and hooks or pots are attached. Longlines can be stationary, anchored, or buoyed lines that may be hauled manually, electrically, or hydraulically.

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Pair trawl means a cone or funnel-shaped net that is towed through the water by two boats simultaneously.

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Powerhead means any device with an explosive charge, usually attached to a spear gun, spear, pole, or stick, that may or may not fire a projectile upon contact.

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Purse seine means a floated and weighted encircling net that is closed by means of a drawstring threaded through rings attached to the bottom of the net.

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Rod and reel means a hand-held (including rod holder) fishing rod with a manually or electrically operated reel attached.

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Seine means a net with a small conical bag and long narrow wings, that is rigged with floats and weights.

Slurp gun means tube-shaped suction device that operates somewhat like a syringe by sucking up the fish into a holding bag.

Snare means a device consisting of a pole to which is attached a line forming at its end a loop with a running knot that tightens around the fish when the line is pulled.

Spear means a sharp, pointed, or barbed instrument on a shaft. Spears can be operated manually or shot from a gun or sling.

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Tangle net dredge means dredge gear consisting of weights and flimsy netting that hangs loosely in order to immediately entangle fish.

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Trammel net means a net consisting of two or more panels of netting, suspended vertically in the water column by a common float line and a

common weight line. One panel of netting has a larger mesh size than the other(s) in order to entrap fish in a pocket.

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Trap means a portable, enclosed device with one or more gates or entrances and one or more lines attached to surface floats. Also called a pot.

Trawl means a cone or funnel-shaped net that is towed through the water.

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3. In § 600.725, paragraph (v) is added to read as follows:

§ 600.725 General prohibitions.

* * * * *

(v) The use of any gear or participation in a fishery not on the following list of authorized fisheries and gear is prohibited after [*date 180 days after the date of publication of the final rule*]. Listed gear can only be used in a manner that is consistent with existing laws or regulations. The list of fisheries and allowable gear does not, in any way, alter or supersede any definitions or regulations contained elsewhere in this chapter. A person or vessel is prohibited from engaging in fishing or employing fishing gear when such fishing or gear is prohibited or restricted by regulation under an FMP or under other applicable law. However, after [*date 180 days after the date of publication of the final rule*], an individual fisherman may notify the appropriate Council, or the Assistant Administrator in the case of Atlantic highly migratory species, of the intent to use a gear or participate in a fishery not already on this list. Ninety days after such notification, the individual may use the gear or participate in that fishery unless regulatory action is taken to prohibit the use of the gear or participate in the fishery (e.g., through emergency or interim regulations). The list of authorized fisheries and gear is as follows:

Fishery	Allowable gear types
New England Fishery Management Council (NEFMC)	
Atlantic Sea Scallops Fishery Management Plan FMP:	
A. Dredge fishery	A. Dredge.
B. Trawl fishery	B. Trawl.
Atlantic Salmon FMP	No harvest/possession in the EEZ.
Northeast (NE) Multispecies FMP:	
A. NE Multispecies Sink Gillnet	A. Gillnet.
B. North Atlantic bottom trawl	B. Trawl.
C. Groundfish hook and line	C. Longline, handline.
D. Mixed species trap/pot	D. Trap/pot.
E. Dredge fishery	E. Dredge.
F. Seine fishery	F. Seine.
G. Recreational fishery	G. Rod and reel, handline, spear.
American Lobster FMP:	
A. Lobster pot/trap	A. Pot, trap.
B. North Atlantic bottom trawl	B. Trawl.
C. Coastal/inshore gillnet	C. Gillnet.
D. Dredge fishery	D. Dredge.
E. Recreational fishery	E. Pot, trap.
Atlantic Herring Preliminary Fishery Management Plan:	
A. Coastal herring trawl	A. Trawl.
B. Atlantic herring purse seine	B. Purse seine.
C. Coastal/inshore gillnet	C. Gillnet.
D. Herring pair trawl fishery	D. Pair trawl.
E. Recreational fishery	E. Hook and line.
Dogfish Fishery (Non-FMP):	
A. Gillnet fishery	A. Gillnet.
B. Trawl fishery	B. Trawl.
Atlantic Bluefish (FMP managed by MAFMC):	
A. Pelagic longline/hook and line	A. Longline, handline.
B. Seine fishery	B. Purse seine, seine.
C. Mixed species pot/trap fishery	C. Pot, trap.
D. Bluefish, croaker, flounder trawl	D. Trawl.
E. Pelagic drift gillnet fishery	E. Gillnet.
F. Dredge fishery	F. Dredge.
G. Recreational fishery	G. Rod and reel, handline, trap, pot.
Atlantic Mackerel, Squid and Butterfish Fishery (FMP managed by the MAFMC):	
A. Mackerel, squid, butterfish trawl	A. Trawl.
B. Pelagic drift gillnet	B. Gillnet.
C. Pelagic longline/hook and line	C. Longline, handline.
D. Purse seine fishery	D. Purse seine.
E. Mixed species pot/trap fishery	E. Pot, trap.
F. Dredge fishery	F. Dredge.
G. Recreational fishery	G. Rod and reel, handline, pot.
Atlantic Menhaden Purse Seine (Non-FMP)	Purse seine.
Atlantic Halibut Fishery (Non-FMP)	Longline.
Weakfish Fishery (Non-FMP):	
A. Commercial fishery	A. Trawl, gillnet, hook and line.
B. Recreational fishery	B. Hook and line.
Atlantic Mussel/Sea Urchin Dredge Fishery (Non-FMP)	Dredge.
Atlantic Skate Fishery:	
A. Trawl fishery	A. Trawl.
B. Gillnet fishery	B. Gillnet.

Fishery	Allowable gear types
Crab Fishery (Non-FMP)	Pot.
Northern Shrimp Fishery:	
A. Shrimp trawl fishery	A. Trawl.
B. Shrimp pot fishery	B. Pot.
Monkfish Fishery (Non-FMP):	
A. Trawl fishery	A. Trawl.
B. Gillnet fishery	B. Gillnet.
Summer Flounder, Scup, Black Sea Bass Fishery (FMP managed by MAFMC):	
A. Bluefish, croaker, flounder trawl	A. Trawl.
B. Pelagic longline/hook and line	B. Longline, handline.
C. Mixed species pot/trap fishery	C. Pot, trap.
D. Pelagic drift gillnet fishery	D. Gillnet.
E. Recreational fishery	E. Rod and reel, handline, pot, trap.
Mid-Atlantic Fishery Management Council (MAFMC)	
Summer Flounder, Scup, Black Sea Bass FMP:	
A. Bluefish, croaker, flounder trawl	A. Trawl.
B. Pelagic longline/hook and line	B. Longline, handline.
C. Mixed species pot/trap fishery	C. Pot, trap.
D. Pelagic drift gillnet fishery	D. Gillnet.
E. Recreational fishery	E. Rod and reel, handline, pot, trap.
Atlantic Bluefish FMP:	
A. Bluefish, Croaker, Flounder trawl	A. Trawl.
B. Pelagic longline/hook and	B. Longline, handline.
C. Mixed species pot/trap fishery	C. Pot, trap.
D. Pelagic drift gillnet fishery	D. Gillnet.
E. Seine fishery	E. Purse seine, seine.
F. Dredge fishery	F. Dredge.
G. Recreational fishery	G. Rod and reel, handline, trap, pot.
Atlantic Mackerel, Squid, and Butterfish FMP:	
A. Mackerel, Squid, Butterfish trawl	A. Trawl.
B. Pelagic drift gillnet	B. Gillnet.
C. Pelagic longline/hook and	C. Longline, handline.
D. Purse seine fishery	D. Purse seine.
E. Mixed species pot/trap fishery	E. Pot, trap.
F. Dredge fishery	F. Dredge.
G. Recreational fishery	G. Rod and reel, handline, pot.
Surf Clam/Ocean Quahog FMP	Dredge.
Atlantic Sea Scallop Fishery (FMP managed by NEFMC):	
A. Dredge fishery	A. Dredge.
B. Trawl fishery	B. Trawl.
Atlantic Menhaden Purse Seine Fishery (Non-FMP)	Purse seine.
Northern Shrimp Trawl (Non-FMP)	Trawl.
American Lobster Fishery (FMP managed by NEFMC)	Pot, trap.
Weakfish fishery (Non-FMP):	
A. Commercial fishery	A. Trawl, gillnet, hook and line.
B. Recreational fishery	B. Hook and line.
Mixed Species Trawl (Non-FMP)	Trawl.
Whelk Fishery (Non-FMP):	
A. Trawl fishery	A. Trawl.
B. Pot/trap fishery	B. Pot/trap.
Monkfish Trawl (Non-FMP)	Trawl.
Coastal Gillnet Fishery (Non-FMP)	Gillnet.
Recreational Fishery (Non-FMP)	Rod and reel, handline.
South Atlantic Fishery Management Council	
Golden Crab FMP	Trap.
Atlantic Red Drum FMP	No harvest/possession in EEZ.
Coral and Coral Reef FMP:	
A. Octocoral commercial fishery	Hand harvest only.
B. Live rock aquaculture	Hand harvest only.
C. Octocoral recreational fishery	Hand harvest only.
South Atlantic Shrimp FMP	Trawl.
South Atlantic Snapper-Grouper FMP:	
A. Commercial fishery	A. Longline, rod and reel, bandit gear, handline, spear.
B. Black sea bass trap/pot	B. Pot, trap.
C. Wreckfish fishery	C. Rod and reel, bandit gear, handline.
D. Recreational fishery	D. Handline, rod and reel, pot, trap, bandit gear, slurp gun, spear, powerhead.
South Atlantic Spiny Lobster FMP:	
A. Commercial fishery	A. Trap, pot, dip net, bully net, snare.

Fishery	Allowable gear types
B. Recreational fishery	B. Trap, pot, dip net, bully net, snare.
South Atlantic Coastal Migratory Pelagics FMP:	
A. Commercial Spanish mackerel fishery	A. Handline, rod and reel, bandit gear, gillnet, cast net.
B. Commercial King mackerel fishery	B. Handline, rod and reel, bandit gear.
C. Other commercial coastal migratory pelagics	C. Longline, handline, rod and reel, bandit gear.
D. Recreational fishery	D. Bandit gear, rod and reel, handline.
Atlantic Mackerel, Squid, and Butterfish Trawl (Non-FMP).	Trawl.
Weakfish Fishery (Non-FMP):	
A. Commercial fishery	A. Trawl, gillnet, hook and line.
B. Recreational fishery	B. Hook and line.
Whelk Trawl Fishery (non-FMP)	Trawl.
Marine Life Aquarium Fishery (Non-FMP)	Dip net, slurp gun, barrier net, allowable chemical.
Calico Scallops Trawl (non-FMP)	Trawl.
Bluefish, Croaker, Flounder Trawl (Non-FMP)	Trawl.
Recreational Fishery (Non-FMP)	Handline, bandit gear, rod and reel.
Gulf of Mexico Fishery Management Council	
Gulf of Mexico Red Drum FMP	No harvest/possession in EEZ.
Coral Reef FMP:	
A. Commercial fishery	A. Hand harvest only.
B. Recreational fishery	B. Hand harvest only.
Gulf of Mexico Reef Fish FMP:	
A. Snapper-Grouper reef fish longline/hook and line	A. Longline, handline, bandit gear, rod and reel, buoy gear.
B. Pot/trap reef fish	B. Pot, trap.
C. Other commercial fishery	C. Spear, powerhead, cast net, trawl.
D. Recreational fishery	D. Spear, powerhead, bandit gear, handline, rod reel, cast net.
Gulf of Mexico Shrimp FMP:	
A. Gulf of Mexico shrimp trawl	A. Trawl.
B. Recreational fishery	B. Trawl.
Gulf of Mexico Coastal Migratory Pelagics FMP:	
A. Large pelagics longline	A. Longline.
B. King/Spanish mackerel gillnet fishery	B. Gillnet.
C. Pelagic hook and line	C. Bandit gear, handline, rod and reel.
D. Pelagic species purse seine	D. Purse seine.
E. Recreational fishery	E. Bandit gear, handline, rod and reel, spear.
Gulf of Mexico Spiny Lobster FMP:	
A. Spiny lobster pot/trap fishery	A. Trap, pot.
B. Dip net fishery	B. Dip net, bully net, hoop net.
C. Recreational fishery	C. Dip net, bully net, pot, trap, snare.
Stone Crab FMP:	
A. Trap/pot crab fishery	A. Trap, pot.
B. Recreational fishery	B. Trap, pot.
Mullet Fishery (Non-FMP):	
A. Trawl fishery	A. Trawl.
B. Gillnet fishery	B. Gillnet.
C. Pair trawl fishery	C. Pair trawl.
D. Recreational fishery	D. Bandit gear, handline, rod and reel.
Inshore Coastal Gillnet (Non-FMP)	Gillnet.
Golden Crab Fishery (Non-FMP)	Trap.
Octopus Fishery (Non-FMP)	Trap.
Marine Life Aquarium Fishery (Non-FMP)	Dip net, slurp gun, barrier net, allowable chemical.
Coastal Herring Trawl (Non-FMP)	Trawl.
Butterfish Trawl (Non-FMP)	Trawl.
Gulf of Mexico Groundfish (Non-FMP):	
A. Commercial fishery	A. Trawl, purse seine, gillnet.
B. Recreational fishery	B. Hook and line.
Gulf of Mexico Menhaden Purse (Non-FMP)	Purse seine.
Sardine Purse Seine (Non-FMP)	Purse seine.
Recreational fishery (Non-FMP)	Bandit gear, handline, rod and reel, spearfishing gear, bully net, gillnet, dip net, longline powerhead, seine, slurp gun, trap, trawl, harpoon.
Caribbean Fishery Management Council	
Caribbean Spiny Lobster FMP:	

Fishery	Allowable gear types
A. Trap/pot fishery	A. Trap/pot.
B. Dip net fishery	B. Dip net.
C. Entangling net fishery	C. Gillnet, trammel net.
D. Recreational fishery	D. Dip net, trap, pot, gillnet, trammel net.
Caribbean Shallow Water Reef Fish FMP:	
A. Longline/hook and line fishery	A. Longline, hook and line.
B. Trap/pot fishery	B. Trap, pot.
C. Entangling net fishery	C. Gillnet, trammel net.
D. Recreational fishery	D. Dip net, handline, rod and reel, slurp gun, spear.
Coral and Reef Resources FMP:	
A. Commercial fishery	A. Dip net, slurp gun.
B. Recreational fishery	B. Dip net, slurp gun.
Queen Conch FMP:	
A. Commercial fishery	A. Hand harvest only.
B. Recreational fishery	B. Hand harvest only.
Caribbean Pelagics (Non-FMP):	
A. Pelagics drift gillnet	A. Gillnet.
B. Pelagics longline/hook and line	B. Longline/hook and line.
C. Recreational fishery	C. Spear, handline, longline.
Pacific Fishery Management Council	
Washington, Oregon, and California FMP:	
A. Salmon set gillnet fishery	A. Gillnet.
B. Salmon hook and line fishery	B. Hook and line.
C. Trawl fishery	C. Trawl.
D. Recreational fishery	D. Rod and reel.
West Coast Groundfish FMP:	
A. Pacific groundfish trawl	A. Trawl.
B. Set gillnet fishery	B. Gillnet.
C. Groundfish longline/setline	C. Longline.
D. Groundfish handline/hook and line	D. Handline, hook and line.
E. Groundfish pot/trap fishery	E. Pot, trap.
F. Recreational fishery	F. Rod and reel, handline, spear, hook and line.
Northern Anchovy FMP	Purse seine, lampara net.
Angel Shark, White Croaker, California Halibut, White Sea Bass, Pacific Mackerel Large-Mesh Set Net Fishery (Non-FMP).	Gillnet.
Thresher Shark/ Swordfish Drift Gillnet (Non-FMP)	Gillnet.
Pacific Shrimp/Prawn (Non-FMP):	
A. Pot/trap fishery	A. Pot/trap.
B. Trawl fishery	B. Trawl.
Lobster, Rock Crab Pot/Trap Fishery (Non-FMP)	Pot, trap.
Pacific Halibut Longline/Setline (Non-FMP)	Longline.
Shark/Bonito Longline/Setline (Non-FMP)	Longline.
Dungeness Crab Pot/Trap (Non-FMP)	Pot, trap.
Hagfish Trap/Pot Fishery (Non-FMP)	Trap, pot.
Pacific Albacore, Other Tuna Hook and Line Fishery (Non-FMP)	Hook and line.
Pacific Swordfish Harpoon (Non-FMP)	Harpoon.
Pacific Scallop Dredge (Non-FMP)	Dredge.
Pacific Yellowfin, Skipjack, Tuna, Purse Seine (Non-FMP)	Purse seine.
Market Squid Purse Seine, Fishery (Non-FMP)	Purse seine.
Pacific Sardine, Pacific, Mackerel, Pacific Saury, Pacific, Bonito Purse Seine Fishery, (Non-FMP).	Purse seine.
Finfish and Shellfish Live, Trap, Hook and line/Handline (Non-FMP)	Trap, handline, hook and line.
Recreational Fishery	Spear, trap, handline, pot, hook and line, rod and reel.
North Pacific Fishery Management Council	
Alaska Scallop FMP	Dredge.
Bering Sea (BS) and Aleutian Islands (AI) King and Tanner Crab FMP:	
A. Alaskan crustacean crab pot	A. Pot
B. Recreational fishery	B. Pot.
BS and AI Groundfish FMP:	
A. Groundfish trawl fishery	A. Trawl.
B. Bottomfish hook and line, handline	B. Hook and line, handline.
C. Longline fishery	C. Longline
D. BS and AI and Gulf of Alaska (GOA) pot/trap fishery	D. Pot, trap.
E. Recreational fishery	E. Handline, rod and reel, hook and line, pot, trap.
Pacific Halibut (Non-FMP):	
A. Pacific halibut handline/hook and line	A. Hook and line, handline.

Fishery	Allowable gear types
B. Pacific halibut longline/ setline	B. Longline.
C. Recreational fishery	C. Handline, rod and reel, hook and line.
Alaska High Seas Salmon FMP:.	
A. Alaska salmon hook and line	A. Hook and line.
B. Alaska salmon gillnet fishery	B. Gillnet.
C. Alaska salmon purse seine	C. Purse seine.
D. Recreational fishery	D. Handline, rod and reel, hook and line.
Alaska Pair Trawl (Non-FMP)	Pair trawl.
Alaska Finfish Otter/Beam Trawl (Non-FMP)	Trawl.
Octopus/Squid Purse Seine (Non-FMP)	Purse seine.
Finfish Purse Seine (Non-FMP)	Purse seine.
Octopus/Squid Longline (Non-FMP)	Longline.
Finfish Handline/Hook and Line (Non-FMP)	Handline, hook and line.
Octopus/Squid Handline (Non-FMP)	Handline.
Recreational Fishery (Non-FMP)	Handline, rod and reel, hook line.
Western Pacific Fishery Management Council	
Western Pacific Crustacean FMP:	
A. Lobster/crab/shrimp trap fishery	A. Trap.
B. Crab hoop net fishery	B. Hoop net.
C. Shrimp trawl fishery	C. Trawl.
D. Recreational fishery	D. Hoop net, trap.
Western Pacific Precious Coral FMP Tangle Net Dredge Fishery	Tangle net dredge.
Western Pacific Bottomfish/Seamount Groundfish FMP:	
A. Bottomfish handline fishery	A. Handline.
B. Hook and line/rod and reel	B. Hook and line, rod and reel.
C. Longline fishery	C. Longline.
D. Trap/pot fishery	D. Trap/pot.
E. Spear fishery	E. Spear, powerhead.
F. Recreational fishery	Handline, rod and reel, spear, powerhead, pot, trap, hook and line.
Western Pacific Pelagics FMP:	
A. Swordfish, tuna, billfish Mahi mahi, wahoo, shark longline/setline fishery	A. Longline.
B. Tuna handline/hook and line	B. Handline, hook and line.
C. Pole and line fishery	C. Rod and reel, handline, hook and line.
D. Purse seine fishery	D. Purse seine.
E. Dip net/hoop net fishery	E. Dip net, hoop net.
F. Spear fishery	F. Spear, powerhead.
Gillnet Fishery (Non-FMP)	Gillnet.
Recreational Fishery (Non-FMP)	Rod and reel, handline, hook and line.
Secretary of Commerce	
Atlantic Swordfish FMP:	
A. Hook and line fishery	A. Rod and reel, handline.
B. Longline fishery	B. Longline.
C. Drift gillnet fishery	C. Gillnet.
D. Harpoon fishery	D. Harpoon.
Atlantic Sharks FMP:	
A. Hook and line fishery	A. Rod and reel, handline, bandit gear.
B. Longline fishery	B. Longline.
C. Drift gillnet fishery	C. Gillnet.
D. Harpoon fishery	D. Harpoon.
Atlantic Billfish FMP (Recreational only):	
A. Hook and line fishery	A. Rod and reel, handline, bandit gear.
B. Harpoon fishery	B. Harpoon.
Atlantic Tunas (Non-FMP):	
A. Hook and line fishery	A. Rod and reel, handline, bandit gear.
B. Purse seine fishery	B. Purse seine.
C. Longline fishery	C. Longline.
D. Harpoon fishery	D. Harpoon.
E. Recreational fishery	E. Rod and reel, bandit gear, harpoon, handline.

4. Section 600.747 is added to read as follows:

§ 600.747 Guidelines and procedures for determining new fisheries and gear.

(a) *General.* Section 305(a) of the Magnuson-Stevens Act requires the Secretary to prepare a list of all fisheries under the authority of each Council, or the Director in the case of Atlantic highly migratory species, and all gear used in such fisheries. This section contains guidelines in paragraph (b) for determining when fishing gear or a fishery is sufficiently different from

those listed in § 600.725(v) as to require notification of a Council or the Director in order to use the gear or participate in the unlisted fishery. This section also contains procedures in paragraph (c) for notification of a Council or the Director of potentially new fisheries or gear, and for amending the list of fisheries and gear.

(b) *Guidelines.* The following guidance establishes the basis for determining when fishing gear or a fishery is sufficiently different from those listed to require notification of the appropriate Council or the Director.

(1) The initial step in the determination of whether a fishing gear or fishery is sufficiently different to require notification is to compare the gear or fishery in question to the list of authorized fisheries and gear in § 600.725(v) and to the existing gear definitions in § 600.10.

(2) If the gear in question falls within the bounds of a definition in § 600.10 for an allowable gear type within that fishery, as listed under section 600.725(v), then the gear is not considered different, is considered allowable gear, and does not require notification of the Council or Secretary 90 days before it can be used in that fishery.

(3) If, for any reason, the gear is not consistent with a gear definition for a listed fishery as described in paragraph (b)(2) of this section, the gear is considered different and requires Council or Secretarial notification as described in paragraph (c) of this section 90 days before it can be used in that fishery.

(4) If a fishery falls within the bounds of the list of authorized fisheries and gear in § 600.725(v) under the Council's or Secretary's authority, then the fishery is not considered different, is considered an allowable fishery and does not require notification of the Council or Director before that fishery can occur.

(5) If a fishery is not already listed in the list of authorized fisheries and gear in § 600.725(v), then the fishery is considered different and requires notification as described in paragraph (c) of this section 90 days before it can occur.

(c) *Procedures.* If a gear or fishery does not appear on the list in § 600.725(v), or if the gear is different from that defined in § 600.10, the process for notification, and consideration by a Council or the Director, is as follows:

(1) *Notification.* After [*date 180 days from date of publication in the Federal Register of the final rule*], no person or vessel may employ fishing gear or engage in a fishery not included on the list of approved gear types in § 600.725(v) without notifying the appropriate Council or the Director at least 90 days before the intended use of that gear.

(2) *Notification procedures.* (i) A signed return receipt for the notice serves as adequate evidence of the date that the notification was received by the appropriate Council or the Director, in the case of Atlantic highly migratory species, and establishes the beginning of the 90-day notification period, unless required information in the notification is incomplete.

(ii) The notification must include:

(A) Name, address, and telephone number of the person submitting the notification.

(B) Description of the gear.

(C) The fishery or fisheries in which the gear is or will be used.

(D) A diagram and/or photograph of the gear, as well as any specifications and dimensions necessary to define the gear.

(E) The season(s) in which the gear will be fished.

(F) The area(s) in which the gear will be fished.

(G) The anticipated bycatch species associated with the gear, including protected species, such as marine mammals, sea turtles, sea birds, or species listed as endangered or threatened under the ESA.

(H) How the gear will be deployed and fished, including the portions of the marine environment where the gear will be deployed (surface, midwater, and bottom).

(iii) Failure to submit complete and accurate information will result in a delay in beginning the 90-day notification period. The 90-day notification period will not begin until the information received is determined to be accurate and complete.

(3) *Action upon receipt of notification*—(i) *Species other than Atlantic Highly Migratory Species.* (A) Upon signing a return receipt of the notification by certified mail regarding an unlisted fishery or gear, a Council must immediately begin consideration of the notification and send a copy of the notification to the appropriate Regional Administrator.

(B) If the Council finds that the use of an unlisted gear or participation in a new fishery would not compromise the effectiveness of conservation and management efforts, it shall:

(1) Recommend to the RA that the list be amended;

(2) Provide rationale and supporting analysis, as necessary, for proper consideration of the proposed amendment; and

(3) Provide a draft proposed rule for notifying the public of the proposed addition, with a request for comment.

(C) If the Council finds that the proposed gear or fishery will be detrimental to conservation and management efforts, it will recommend to the RA that the authorized list of fisheries and gear not be amended, that a proposed rule not be published, give reasons for its recommendation of a disapproval, and may request NMFS to publish emergency or interim regulations, and begin preparation of an FMP or amendment to an FMP, if appropriate.

(D) After considering information in the notification and Council's recommendation, NMFS will decide whether or not to publish a proposed rule. If information on the new gear or fishery being considered indicates it is likely that it will compromise conservation and management efforts under the Magnuson-Stevens Act, and no additional new information is likely to be gained from a public comment period, then a proposed rule will not be published and NMFS will notify the appropriate Council. In such an instance, NMFS will publish emergency or interim regulations to prohibit or restrict use of the gear or participation in the fishery. If NMFS determines that the proposed amendment is not likely to compromise conservation and management efforts under the Magnuson-Stevens Act, NMFS will publish a proposed rule in the **Federal Register** with a request for public comment.

(ii) *Atlantic Highly Migratory Species.* (A) Upon signing a return receipt of the notification by certified mail regarding an unlisted fishery or gear for Atlantic highly migratory species (HMS), NMFS will immediately begin consideration of the notification.

(B) Based on information in the notification and submitted by the Council, NMFS will make a determination whether the use of an unlisted gear or participation in an unlisted HMS fishery will compromise the effectiveness of conservation and management efforts under the Magnuson-Stevens Act. If it is determined that the proposed amendment will not compromise conservation and management efforts, NMFS will publish a proposed rule.

(C) If NMFS finds that the proposed gear or fishery will be detrimental to conservation and management efforts in this initial stage of review, it will not publish a proposed rule and notify the

applicant of the negative determination with the reasons therefore.

(4) *Final determination and publication of a final rule.* Following public comment, NMFS will approve or disapprove the amendment to the list of gear and fisheries.

(i) If approved, NMFS will publish a final rule in the **Federal Register** and notify the applicant and the Council, if appropriate, of the final approval.

(ii) If disapproved, NMFS will withdraw the proposed rule, notify the applicant and the Council, if appropriate, of the disapproval; publish emergency or interim regulations, if necessary, to prohibit or restrict the use of gear or the participation in a fishery; and either notify the Council of the need to amend an FMP or prepare an amendment to an FMP in the case of Atlantic highly migratory species.

[FR Doc. 98–14735 Filed 6–3–98; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[I.D. 052698C]

Gulf of Mexico Fishery Management Council; Public Hearings

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

ACTION: Notice of public hearings; request for comments.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will convene public hearings on the Draft Essential Fish Habitat (EFH) Generic Amendment to the Fishery Management Plans (FMP) of the Gulf of Mexico. Public meetings on the NMFS draft EFH recommendations will be held following one of the public hearings.

DATES: Written comments on the Council's draft EFH amendment will be accepted through July 17, 1998. Written comments on NMFS' draft EFH recommendation will be accepted through July 15, 1998.

The public hearings will be held in June and July. See **SUPPLEMENTARY INFORMATION** for specific dates and times of the public hearings.

ADDRESSES: Written comments on the draft amendment should be sent to, and copies of the draft amendment are available from, the Council at the following address: Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301, North, Suite 1000, Tampa, FL 33619. Copies of the amendment can be obtained by calling (813) 228–2815.

Written comments on the NMFS draft EFH recommendations should be addressed to: Habitat Conservation Division, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702-2432, Attn: Draft EFH Recommendation to GMFMC. Copies of the draft recommendations can be obtained by calling (813) 570-5317.

Public hearings will be held in Florida, Louisiana, Mississippi, Alabama, and Texas. See **SUPPLEMENTARY INFORMATION** for locations of the hearings.

FOR FURTHER INFORMATION CONTACT: Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council; telephone: (813) 228–2815.

SUPPLEMENTARY INFORMATION: The Council will hold public hearings on a draft generic amendment addressing EFH in the Gulf of Mexico; eight public hearings will be held to obtain public comments. The description and identification of EFH is mandated by section 305(b) the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The generic EFH amendment that is the subject of these hearings addresses EFH in all seven of the Council's FMPs. The following is a summary of the amendment:

1. EFH is identified and described based on areas where various life stages of 21 selected managed species and the coral complex commonly occur. The selected species are: Shrimp (brown shrimp, *Penaeus aztecus*; white shrimp, *Penaeus setiferus*; pink shrimp, *Penaeus duorarum*); red drum, *Sciaenops ocellatus*; reef fish (red grouper, *Epinephelus morio*; gag grouper, *Mycteroperca microlepsis*; scamp grouper, *Mycteroperca phenax*; red snapper, *Lutjanus campechanus*; gray snapper, *Lutjanus griseus*; yellowtail snappper, *Ocyurus chrysurus*; lane snapper, *Lutjanus synagris*; greater amberjack, *Seriola dumerili*; lesser amberjack, *Seriola fasciata*; tilefish, *Lopholatilus chamaeleonticeps*; and gray triggerfish, *Balistes capriscus*), coastal migratory pelagic species (king mackerel, *Scomberomorus cavalla*; Spanish mackerel, *Scomberomorus maculatus*; cobia, *Rachycentron canadum*; and dolphin, *Coryphaena hippurus*), stone crab, *Menippe mercenaria*; spiny lobster, *Panulirus argus*; and the coral complex.

2. The selected species represent about a third of the species under management by the Council. Collectively, these species commonly occur throughout all of the marine and estuarine waters of the Gulf of Mexico. EFH for the remaining managed species will be addressed in future FMP amendments, as appropriate.

3. EFH is defined as everywhere that the above managed species commonly occur. Because these species collectively occur in all estuarine and marine habitats of the Gulf of Mexico, EFH is separated into estuarine and marine components. For the estuarine component, EFH includes all estuarine waters and substrates (mud, sand, shell, rock, and associated biological communities), including subtidal vegetation (seagrasses and algae) and adjacent intertidal vegetation (marshes and mangroves). In marine waters of the Gulf of Mexico, EFH includes virtually all marine waters and substrates (mud, sand, shell, rock, and associated biological communities) from the shoreline to the seaward limit of the EEZ.

4. Threats to EFH from fishing and nonfishing activities are identified.

5. Options to conserve and enhance EFH are provided and research needs are identified.

6. No management measures and, therefore, no regulations are proposed at this time. Fishing-related management measures to minimize any identified impacts are deferred to future amendments when the Council has the information necessary to decide if the measures are practicable.

NMFS is in the process of developing an EFH recommendation to the Council in accordance with the 1996 amendments to the Magnuson-Stevens Act. The NMFS draft EFH recommendation to the Council includes a review and comments on the Council's draft EFH amendment. The NMFS draft EFH recommendation to the Council will be available for public distribution June 8, 1998, and will be available at the Council's public hearings. Copies may be requested from the NMFS Habitat Conservation Division (see **ADDRESSES**). Written comments on the NMFS draft EFH recommendation may be sent to the NMFS Habitat Conservation Division (see **ADDRESSES**). NMFS will hold a public meeting on the NMFS draft EFH recommendations immediately following the Council's June 22, 1998, public hearing in Kenner, LA.

Public hearings will be held from 7:00 p.m. to 10:00 p.m. at all of the following locations:

1. Wednesday, June 17, 1998—Ramada Airport Inn & Conference

Center, 5303 West Kennedy Boulevard, Tampa, FL 33609.

2. Thursday, June 18, 1998—Holiday Inn Beachside, 3841 North Roosevelt Boulevard, Key West, FL 33040.

3. Monday, June 22, 1998—New Orleans Airport Radisson, 2150 Veterans Boulevard, Kenner, LA 70062.

4. Tuesday, June 23, 1998—J.L. Scott Marine Education Center & Aquarium, 115 East Beach Boulevard, U.S. Highway 90, Biloxi, MS 39530.

5. Wednesday, June 24, 1998—Holiday Inn on the Beach, 365 East Beach Boulevard, Gulf Shores, AL 36547.

6. Thursday, June 25, 1998—National Marine Fisheries Service Panama City Laboratory, 3500 Delwood Beach Road, Panama City, FL 32408.

7. Tuesday, June 30, 1998—Hobby Airport Hilton, 8181 Airport Boulevard, Houston, TX 77061.

8. Wednesday, July 1, 1998—Port Aransas Library, 700 West Avenue A, Port Aransas, TX 78373.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Anne Alford at the Council (see **ADDRESSES**) by June 10, 1998.

Dated: May 29, 1998.

Bruce C. Morehead,

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

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BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 63, No. 107
Thursday, June 4, 1998

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

Submission for OMB Review; Comment Request

May 29, 1998.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (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 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 should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, D.C. 20503 *and* to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, D.C. 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–6746.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

National Agricultural Statistics Service

Title: Fruits, Nut, and Specialty Corps.

OMB Control Number: 0535–0039.

Summary of Collection: U.S. Code title 7, Section 2204, specifies that ''The Secretary of Agriculture shall procure and preserve all information concerning agriculture which he can obtain by the collection of statistics * * * and shall distribute them among agriculturists. The primary function of the National Agricultural Statistics Service (NASS) is to prepare and issue current official state and national estimates of crop and livestock production. Estimates of fruit, tree nuts, and specialty crops are an integral part of this program. These estimates support the NASS strategic plan to annually cover 99 percent of all agricultural receipts. Information is collected on a voluntary basis from growers, processors, and handlers through surveys.

Need and Use of the Information: Data reported on fruit, nut, and Hawaii tropical crops are used by NASS to estimate acreage, yield, production, utilization, and crop value in states with significant commercial production. These estimates are essential to farmers, processors, and handlers in making production and marketing decisions. Estimates from these inquiries are used by market order administrators in their determination of expected supplies of crop under federal and state market orders as well as competitive fruits and nuts.

Description of Respondents: Farms; Business or other for-profit.

Number of Respondents: 40,968.

Frequency of Responses: Reporting: On occasion; Annually.

Total Burden Hours: 14,137.

Cooperative State Research, Education, and Extension Service

Title: Grant Application Forms for the Small Business Innovation Research Grants Program.

OMB Control Number: 0524–0025.

Summary of Collection: In 1982, the Small Business Innovation Research (SBIR) Grants Program was authorized by Public Law 97–219, and in 1992, reauthorized through October 1, 2000, by Public Law 102–564. This legislation requires each Federal agency with a research and research and development budget in excess of $100 million to establish an SBIR program. The objectives of the U.S. Department of Agriculture (USDA), Cooperative State Research, Education, and Extension Service (CSREES) SBIR Program are to stimulate technological innovation in the private sector, strengthen the role of small businesses in meeting Federal research and development needs, increase private sector commercialization of innovations derived from USDA-supported research and developments efforts, and foster and encourage participation by women-owned and socially and economically disadvantaged small business firms in technological innovation. USDA conducts its SBIR Program through the use of grants awards and these grants are administered by the Grants Management Branch, CSREES. Each year, USDA issues an SBIR Program Solicitation requesting Phase I proposals. These proposals are evaluated by peer review panels and awarded on a competitive basis. The SBIR Program Solicitation requests that applicants submit proposals following the format outlined in the SBA Policy Directive.

Need and Use of the Information: CSREES uses forms CSREES–667, ''Proposal Cover Sheet'' and CSREES–688, ''Project Summary'', to collected recordkeeping data, required certifications, and information used to respond to inquiries from Congress, other Government agencies, and the grantee community concerning grant projects supported by the USDA SBIR Program.

Description of Respondents: Business or other for-profit.

Number of Respondents: 480.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 1,920.

Natural Resources Conservation Service

Title: Rural Abandoned Mine Program.

OMB Control Number: 0578–0019.

Summary of Collection: Section 406 of the Surface Mining Control and Reclamation Act of 1977 (Pub. L. 95–87, 91 Stat. 460, as amended, 30 U.S.C. 1236) directs the Secretary of Agriculture and the Natural Resources Conservation Service (NRCS) to formulate and carry out a Rural Abandoned Mine Program (RAMP)

during the 1977–2000 calendar years. This program authorizes federal technical and financial long term cost sharing assistance for conservation treatment with eligible land users. The financial assistance is based on a conservation plan for reclamation which is made a part of an agreement or contract for a 5 to 10 year period of time. Under the terms of the agreement, the participant agrees to apply, or arrange to apply, the conservation treatment specified in the conservation plan. In return for this agreement, federal cost-share payments are made to the land user, or third party, upon successful application of the conservation treatment. Forms are used to collect information from program applicants and to establish legal contracts for program participants.

Need and Use of the Information: The information collected on RAMP forms is obtained from RAMP participants manually for use by NRCS. The information is used by NRCS to review landowner applications for assistance, evaluate and record progress on applying conservation practices, and to monitor compliance with the RAMP provisions.

Description of Respondents: Farms; Individuals or households; State, Local or Tribal Government.

Number of Respondents: 400.

Frequency of Responses: Reporting.

Total Burden Hours: 223.

Farm Service Agency

Title: 7 CFR Part 1421—General Regulations Governing Loans for 1996 and Subsequent Corps.

OMB Control Number: 0560–0087.

Summary of Collection: The Farm Service Agency is authorized by the Federal Agriculture Improvement and Reform Act of 1996 (the 1996 Act), to make commodity loans for certain commodities to eligible producers. Producers requesting Commodity Credit Corporation (CCC) commodity loans must meet eligibility requirements which are basic to all commodity loan programs. These requirements are needed to insure the integrity of the loan program and that only eligible producers receive the benefits of the loan program. FSA will collect information on commodity type, quantity of commodity, storage, location, liens on the commodity, etc., through the use of a variety of forms.

Need and Use of the Information: FSA County Committees are responsible for administration of the CCC loan program. The committees use the information collected on the forms to determine eligibility of participants to receive loan benefits. Information is also used to determine cases of noncompliance with the regulations governing the loan program. Furnishing this data is voluntary. However, without it, assistance under the CCC loan program cannot be provided.

Description of Respondents: Farm.

Number of Respondents: 364,240.

Frequency of Responses: Reporting: On occasion; Annually.

Total Burden Hours: 438,732.

Agricultural Marketing Service

Title: Report Forms Under Milk Marketing Order Programs (From Milk Handlers and Milk Marketing Cooperative).

OMB Control Number: 0581–0032.

Summary of Collection: Agricultural Marketing Service (AMS) oversees the administration of Federal Milk Marketing Orders authorized by the Agricultural Marketing Agreement Act of 1937, as amended. The Federal Milk Marketing Order regulations require that handlers of milk report in detail the receipt and utilization of milk and milk products handled at each of their plants that are regulated by a Federal Order. The Report of Receipts and Utilization and the Producer Payroll Report are completed by regulated milk handlers and milk marketing cooperative and are the principal reporting forms needed to administer the 31 Federal milk marketing orders.

Need and Use of the Information: The information will be collected through the use of several forms and reports by the market administrator. The forms are used to establish the quality of milk received by handlers, the pooling status of the handlers, the class-use of the milk used by the handler and the butterfat content and amounts of other components of the milk. The data also allows AMS to administer the classified pricing system and related requirements of each Federal order.

Description of Respondents: Business or other for-profit.

Number of Respondents: 772.

Frequency of Responses: Recordkeeping; Reporting: On occasion; Quarterly; Semi-annually; Monthly; Annually.

Total Burden Hours: 23,858.

Agricultural Marketing Service

Title: 7 CFR Part 70, Regulations for Voluntary Grading of Poultry Products and Rabbit Products.

OMB Control Number: 0581–0127.

Summary of Collection: The Agricultural Marketing Act of 1946 (60 Stat. 1087–1091, as amended; 7 U.S.C. 1621–1627) (AMA) directs and authorizes the Department to develop standards of quality, grades, grading programs, and services to enable a more orderly marketing of agricultural products so trading may be facilitated and so consumers may be able to obtain products graded and identified under USDA programs. The Agricultural Marketing Service (AMS) carries out regulations which provide a voluntary program for grading poultry and rabbit products. Because this is a voluntary program, respondents need to request or apply for the specific services they wish, and in doing so, they provide information. Since the AMA requires that the cost of the service be assessed and collected, there is no alternative but to provide voluntary programs on a fee for service basis and to collect the information needed to establish the cost.

Need and Use of the Information: Since the Agricultural Marketing Service does not know what the respondents' wishes or needs are until asked, there is no other choice but to have the respondents request or ask for the specific services or benefits they wish. AMS only requests the information necessary to efficiently make arrangement for the types of service requested, assure service is provided, and to administer the program.

Description of Respondents: Business or other for-profit; Federal Government; State, Local or Tribal Government.

Number of Respondents: 399.

Frequency of Responses: Reporting: On occasion; Semi-annually; Monthly; Annually; Other (Daily).

Total Burden Hours: 1,889.

Cooperative State Research, Education, and Extension Service

Title: Application Kit.

OMB Control Number: 0524–0022.

Summary of Collection: The United States Department of Agriculture (USDA), Cooperative State Research Education, and Extension Service (CSREES) administers several competitive, peer-reviewed research, education, and extension programs, under which awards of a high-priority nature are made. These programs are authorized pursuant to the authorities contained in the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3101), the Smith-Lever Act, and various, other legislative authorities. Before grants can be awarded, certain information is required from applicants as part of an overall package. In addition to a project summary, proposal narrative, and other pertinent technical aspects of the proposed project, supporting documentation of an administrative and budgetary nature also must be provided. Because the

proposals submitted are competitive in nature and necessitate review by peer panelists, it is particularly important that applicants provide the information in a standardized fashion to ensure equitable treatment for all.

Need and Use of the Information: CSREES will collect information on USDA data, program summary and narrative, credentials and budget, for the research, education, and extension program. The information will be used to respond to inquiries from Congress, other governmental agencies, and the grantee community.

Description of Respondents: Not-for-profit institutions; Business or other for-profit; Individuals or households; Federal Government; State, Local, or Tribal Government.

Number of Respondents: 8,900.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 136,450.

Animal and Plant Health Inspection Service

Title: Porcine Reproductive and Respiratory Syndrome (PRRS).

OMB Control Number: 0579–0125.

Summary of Collection: Collection and dissemination of animal health data and information is mandated by 7 U.S.C. 391, the Animal Industry Act of 1884, which established the Animal and Plant Health Inspection Service (APHIS), Veterinary Services (VS). The mission of APHIS, Veterinary Service is to protect and improve the health, quality and marketability of our Nation's animals and animal products by preventing, controlling, and monitoring animal diseases. During the past 2 years a severe form of Porcine Reproductive and Respiratory Syndrome (PRRS) has appeared in the United States. APHIS will collect information on acute PRRS through a survey and other forms to establish the extent of the disease and gather more specific herd data.

Need and Use of the Information: Because of the recent increase in cases of the acute PRRS, it is imperative that data on management practices and environmental conditions, along with blood and tissue samples continue to be collected and analyzed. Analysis can identify the transmission mechanism and provide a means to prevent disease spread to other herds and states. The collection of information will be used to identify management risk factors that exist in higher proportion in affected herds than in noninfected herds, once all the data is collected, analyzed and put into databases.

Description of Respondents: Farms; Business or other for-profit; State, Local or Tribal Government.

Number of Respondents: 107.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 449.

Animal and Plant Health Inspection Service

Title: Importation of Grapefruit, Lemons, and Oranges from Argentina—Docket No. 97–110–1.

OMB Control Number: 0579–New.

Summary of Collection: The Federal Plant Pest Act authorizes the Department of Agriculture and the Animal and Plant Health Inspection Service (APHIS) to prevent plant diseases or insect pests from entering the United States, preventing the spread of pest not widely distributed in the United States, and eradicating those imported pests when eradication is feasible. Section 150bb of the Federal Plant Pest Act (7 USC 150aa–150jj) provides that no plant pest can be moved from a foreign country into or through the United States, or interstate, unless the movement is authorized under a permit issued by the Secretary of Agriculture and the movement is carried out in accordance with the conditions the Secretary may prescribe to prevent the dissemination of plant pests into the United States. APHIS will use a number of forms, including permits and foreign phytosanitary certificates to collect information to ensure that grapefruits, lemons, and oranges from Argentina meet the necessary conditions and requirements for importation into the United States and do not pose a threat of introducing or spreading plant diseases or insect pests that could cause significant harm to American agriculture.

Need and Use of the Information: APHIS will collect information from permit applications to determine if the fruit being imported from Argentina meets the requirements. This information will also enable APHIS to evaluate potential risks associated with the proposed movement of grapefruits lemons, and oranges into the United States. APHIS will use the information to determine whether a permit can be issued, and also to develop risk-mitigating conditions for the proposed movement.

Description of Respondents: Business or other for-profit; farms; State, Local or Tribal Government.

Number of Respondents: 470.

Frequency of Responses: Reporting: On occasion.

Total Burden hours: 715.

Agricultural Marketing Service

Title: Export Fruit Acts.

OMB Control Number: 0581–0143.

Summary of Collection: Fresh apples, pears, and grapes grown in the United States shipped to any foreign destination must meet certain minimum quality and other requirements established by regulations issued under the Export Apple and Pear Act [7 CFR Part 33] and the Export Grape and Plum Act [7 CFR Part 35], hereinafter referred to as the Acts. The regulations issued under the Acts [33.11 for apples and pears, and 35.12 for grapes] requires that the U.S. Department of Agriculture (USDA) and the Agricultural Marketing Service (AMS) officially inspect and certify that each shipment of fresh apples, pears, and grapes is in compliance with all pertinent regulatory requirements effective under the Acts. AMS will collect information from persons who ship fresh apples, pears, and grapes grown in the United States to foreign destinations from inspections certificates and phytosanitary inspection certificates.

Need and Use of the Information: AMS marketing specialists will collect information from certificates relating to the shipment, including the quantity shipped, date shipped, vessel identification, and intended foreign destination of fruit. The marketing specialists also obtain the names and addresses of freight forwarders and export carriers from port authorities at the ports they plan to contact. The marketing specialists contact those export carriers which exported apples, pears and grapes during the past season, and review their fruit shipment files to determine if they have filed the inspection certificates as required, and that the fruit met the requisite requirements.

Description of Respondents: Business or other-for-profit.

Number of Respondents: 115.

Frequency of Responses: Recordkeeping; Reporting: On occasion.

Total Burden Hours: 2,204.

Natural Resources Conservation Service

Title: American Heritage Rivers Initiative.

OMB Control Number: 0578–New.

Summary of Collection: The Natural Resource Conservation Service (NRCS) and the team of Federal agency representatives responsible for developing a symposium for all 126 applicants to the American Heritage Rivers (AHR) Initiative, would like to assure that they meet the specific needs of the applicants. NRCS will collect

information using a one page questionnaire that will ask applicants to provide input so that the symposium will better meet their specific needs in order to implement their AHR plans. More specifically, they will be asked to select the preferred dates for the symposium (weekend or weekday dates). This will allow President Clinton to announce the dates of the symposium in mid-June, when he announces the ten AHR nominations to receive designation this year.

Need and Use of the Information: The information that NRCS collects from the AHR applicants that choose to respond, will be used only by the symposium planning team. Based on the applicants responses the team will then develop an agenda that includes topics of specific interest, tools and information that will help them complete their AHR plans.

Description of Respondents: Not-for-profit institutions; Business or other-for-profit; State, Local or Tribal Government.

Number of Respondents: 126.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 31.5.

Emergency approval for this information collection has been requested by June 1, 1998.

Rural Housing Service

Title: 7 CFR 1944–L, Tenant Grievance and Appeals Procedure.

OMB Control Number: 0575–0046.

Summary of Collection: The Rural Housing Service (RHS) is authorized, under Sections 514, 515, and 521 of the Housing Act of 1949, to provide loans and grants to eligible recipients of the development of rural rental/cooperative and labor housing. Such multiple family housing projects are intended to meet the housing needs of persons or families who have moderate, low- and very-low incomes, senior citizens, the handicapped and domestic farm laborers. RHS is responsible for assuring the public that the housing projects financed are managed and operated as mandated by Congress. For this reason, the Agency implemented a grievance and appeals procedure on October 27, 1980, for tenants, members and applicants for occupancy in multiple family housing financed by RHS. The procedure requires certain information to be collected whenever a tenant wishes to appeal adverse actions by owners/managers of multi-family housing project financed by RHS.

Need and Use of the Information: The information collected is used to notify tenants of the reasons for the adverse actions and to ascertain the viewpoint of the tenant. The information is used in the course of trying to resolve the grievance. The consequence of not collecting the information is that tenants, members or applicants would not be able to exercise their rights provided by the Tenant Grievance Appeals procedure.

Description of Respondents: Individuals or households; Business or other for-profit; State, Local or Tribal Government.

Number of Respondents: 360.

Frequency of Respondents: Recordkeeping; Reporting: On occasion.

Total Burden Hours: 83.

Food and Nutrition Service

Title: Servicing Cases Where Unauthorized Loan or Other Financial Assistance Was Received—Community and Business Programs, 7 CFR 1951–O.

OMB Control Number: 0575–0103.

Summary of Collection: On occasion, the Rural Housing Service (RHS), Rural Business-Cooperative Service (RBS), Rural Utilities Service (RUS), and the Farm Service Agency (FSA) encounter cases where unauthorized assistance was received by a borrower or grantee for which there was no regulatory authorization or for which the recipient was not eligible. In situations where unauthorized assistance may have been given, the Agencies must collect certain financial information to assist in the determination that the assistance received was unauthorized.

Need and Use of the Information: The information submitted by borrowers or grantees is evaluated by local Rural Development and FSA employees. The information is used to review the case to confirm whether unauthorized assistance was received and to make necessary account adjustments.

Description of Respondents: Not-for-profit institutions; State, Local or Tribal Government.

Number of Respondents: 14.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 12.

Farm Service Agency

Title: Dairy Production Disaster Assistance Program—7 CFR 1439.

OMB Control Number: 0560–New.

Summary of Collection: Under P.L. 105–174, Disaster Assistance Supplemental, the Commodity Credit Corporation Fund has been amended to appropriate $6,800,000 to implement a Dairy Production Disaster Assistance Program. The program will provide payments to dairy producers for losses of milk that had been produced but not marketed or for diminished production due to natural disasters designated pursuant to a Presidential or Secretarial declaration requested from November 27, 1997 through May 1, 1998. The Farm Service Agency will collect information from dairy producers applying for assistance.

Need and Use of the Information: FSA will collect information on business records from producers to verify that their milk or dairy production losses did occur. The business record collection will be used by the FSA County Office personnel to determine the eligibility and amount of assistance in accordance with the published regulation. FSA considers the information collection to be essential to make prudent eligibility and assistance determinations and to maintain the credibility of such a program being administered after the losses occurred.

Description of Respondents: Farms.

Number of Respondents: 25,000.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 50,000.

Emergency approval for this information collection has been requested by June 8, 1998.

Nancy Sternberg,

Departmental Information Clearance Officer.

[FR Doc. 98–14857 Filed 6–3–98; 8:45 am]

BILLING CODE 3410–01–M

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request—The Impacts of Time Limits on Unemployed Able-Bodied Adults Without Dependents

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the Food and Nutrition Service to request Office of Management and Budget (OMB) approval of data collection for the study, The Impacts of Time Limits on Unemployed Able-Bodied Adults Without Dependents.

DATES: Comments on this notice must be received by August 3, 1998.

ADDRESSES: Send comments and requests for copies of this information collection to: Alberta Frost, Director, Office of Analysis and Evaluation, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Alexandria, VA 22302.

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance

of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including use of appropriate, automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments will be summarized and included in the request for Office of Management and Budget approval of the information collection. All comments will become a matter of public record.

FOR FURTHER INFORMATION CONTACT: Alberta Frost, (703) 305–2017.

SUPPLEMENTARY INFORMATION:

Title: The Impacts of Time Limits on Unemployed Able-Bodied Adults Without Dependents.

OMB Number: Not yet assigned.

Expiration Date: Not applicable.

Type of Request: New collection of information.

Abstract: With the passage of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub.L. 104–193, (PRWORA), able-bodied adults without dependents are subject to a time limit on receipt of food stamps unless they work or participate in an approved work or training program. PRWORA gives states many options in their implementation of these provisions, including who to exempt, what type of employment and training (E&T) services to offer, and how to track recipients to ensure compliance with the work requirement and time limit. The Food and Nutrition Service (FNS) is conducting a study, The Impacts of Time Limits on Unemployed Able-Bodied Adults Without Dependents, to describe how the time limits have actually been implemented and to count the number of persons affected by the time limits. Addressing these two objectives of the study requires collection of new information, both about how the time limits have been implemented and about the program participants that have been affected. FNS plans two data collection activities related to policy implementation. First, a telephone survey of state, county, and local Food Stamp Program (FSP) staff will be conducted in all 50 states. Second, in-person visits will be conducted to five state FSP offices, and to an advocacy organization and three local offices in each of these five states.

FNS plans three data collection activities to obtain information on the number of persons affected by the policy. First, tabulated data will be requested from all 50 states on the number and characteristics of persons exempt from the time limits, persons subject to the time limits, persons meeting the work requirements, and persons disqualified because of the time limits. Second, micro-level administrative case-record data will be requested from five states for use in conducting supplemental analysis. Third, if a subset of states is unable to provide tabulated data, case-record information will be extracted from up to 20 local offices across this set of states.

Estimate of Burden: The estimated public reporting burden associated with the telephone interviews is as follows: state FSP director and manager of local office operations interviewed together (50 minutes), state E&T manager (30 minutes), local FSP director (10 minutes), local caseworker manager and local FSP director interviewed together (30 minutes), local E&T manager (25 minutes), county FSP director (15 minutes). The estimated public reporting burden associated with the site visits is as follows: meeting with state FSP director and manager of local office operations (3 hours); meeting with state E&T manager and assistant (1.5 hours); meeting with member of a state advocacy group (1.5 hours); meeting with local FSP director, manager of local office operations, and E&T manager together (3 hours); group interview with 4 caseworkers (1.5 hours). The estimated public reporting burden associated with the automated data collection is as follows: preparation of tabulated data (16 hours), preparation of administrative case-record data (16 hours), assistance related to case-record extraction (16 hours).

Respondents: The respondents associated with the telephone interview and site visits are listed above. Automated data experts in state and local FSP offices will prepare the tabulated data and administrative case-record data files. Caseworker managers in local FSP offices will provide assistance related to case-record extraction.

Estimated Number of Respondents: Telephone interviews will be conducted with 418 respondents, and 130 individuals will be interviewed during the site visits. Approximately 75 individuals will assist with the preparation of automated data files and case-record extraction.

Estimated Number of Responses per Respondent: All data collection protocols will be administered once per respondent. The state FSP director, state manager of local office operations, and state E&T manager from five states will participate in both the national telephone survey and in-person interviews. The local office FSP director will be contacted twice as part of the national survey—once to introduce the study and set up the local interview and again to participate with the casework manager in the telephone interview.

Estimated Total Burden on Respondents: 1,719 hours.

Dated: May 22, 1998.

George A. Braley,

Acting Administrator, Food and Nutrition Service.

[FR Doc. 98–14856 Filed 6–3–98; 8:45 am]

BILLING CODE 3410–30–U

DEPARTMENT OF AGRICULTURE

Forest Service

Klamath Provincial Advisory Committee (PAC)

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Klamath Provincial Advisory Committee will meet on June 18 and 19, 1998 at the Bayshore Inn Conference Room, 3500 Broadway, Eureka, California. On June 18, the meeting will begin at 9:00 a.m. and adjourn at 5:00 p.m. The meeting on June 19 will resume at 8:00 a.m. and adjourn at 3:00 p.m. Agenda items to be covered include: (1) follow-up to the joint 3PAC/SCERT meeting; (2) province fuels discussion; (3) watershed analysis concerns on the East Fork/Smokey Creek Watershed Analysis (Shasta-Trinity National Forests) and opportunities for doing watershed analysis differently; (4) follow-up on rechartering the Memorandum of Understanding for the IAC/PACs; and (5) public comment periods. All PAC meetings are open to the public. Interested citizens are encouraged to attend.

FOR FURTHER INFORMATION CONTACT: Connie Hendryx, USDA, Klamath National Forest, 1312 Fairlane Road, Yreka, California 96097; telephone 530–841–4468.

Dated: May 26, 1998.

Michael P. Lee,

Acting Forest Supervisor.

[FR Doc. 98–14858 Filed 6–3–98; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Notice of Request for Approval of New Information Collection

AGENCY: Rural Housing Service, USDA.

ACTION: Proposed collection; comments requested.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces Rural Housing Service's (RHS) intention to request approval of additional information collection in support of the Survey of Housing Conditions for Migrant and Seasonal Farmworkers expanded from just the East Coast to include Midwestern and West Coast migrant streams.

DATES: Comments on this notice must be received by August 3, 1998 to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Mary Fox, Senior Loan Specialist, Multi-Family Housing Processing Division, Rural Housing Service, USDA, Stop 0781, 1400 Independence Avenue SW., Washington, DC. 20250, telephone (202) 720–1604 (this is not a toll free number); or you may contact Leslie R. Strauss, Director of Research and Information, Housing Assistance Council, 1025 Vermont Ave. NW., Suite 606, Washington, DC. 20005, telephone 202–842–8600 (this is not a toll free number).

SUPPLEMENTARY INFORMATION:

Title: Survey of Housing Conditions for Migrant and Seasonal Farmworkers.

Type of Request: New information collection.

Abstract: Migrant and seasonal farmworkers are among the poorest and worst-housed groups in the United States. Only limited information has been collected on farmworker demographics and working conditions, and even less on the housing which they live. The objective of this survey is to collect data on the housing conditions of farmworkers in the midwestern and western migrant streams including types of structures occupied, proportion of households crowded, proportion of households cost burdened, proportion lacking full appliances and sanitary facilities, proportion residing in grower-provided housing, and other characteristics.

Only a few national studies have addressed the needs of the farmworkers, and most have not collected information pertaining to housing conditions. The only major study focusing on farmworker housing conditions was the National Farmworker Housing Study prepared in 1980. This study was never published. Housing developers and others who provide housing to this population are hampered in serving them by this lack of information.

This study has three sets of research goals. The first goal of the study is to refine a survey instrument that may be used by case workers in the field who may not have a strong background in housing assessment. Additionally, the survey instrument must pose a minimal burden upon respondents' time. The study's second goal is to develop new partnerships with organizations that work extensively with the farmworker population, so that the widest range of farmworker housing conditions may be surveyed in a cost-effective manner. The partnership developed for data collection on the East Coast should provide a model for replication in the Midwest and West Coast migrant streams. The third goal of the study is to collect a representative sample of farmworker housing data that illustrates the predominant housing structure types occupied by migrant and seasonal farmworkers, the physical quality of farmworker housing, overcrowding, and housing cost burden. These data items are the primary indicators of housing need and health risk. Gathering this data will help federal agencies and local farmworker service organizations coordinate limited resources and address the most pressing housing needs of farmworkers.

This survey is being expanded from a current HUD-sponsored survey in the Eastern migrant stream. In combination with the study for the East Coast, a national perspective on housing conditions for migrant and seasonal farmworkers will be gained. More detailed information concerning farmworker housing conditions is necessary in order to determine the significant health risks associated with farmworker housing and effectively focus housing resources on the areas of greatest need. The collection of housing data will greatly benefit farmworkers by improving the information available to organizations and federal agencies that address farmworker health and housing needs.

The Housing Assistant Council (HAC) is slated to perform a collection of farmworker housing data in the East Cost migrant stream under a cooperative agreement with the U.S. Department of Housing and Urban Development (HUD), and this research plan will outline the expansion of the data collection to the Midwest and West Coast migrant streams. This will also result in creating a database for the consolidation and retrieval of this data, and provision of stipends for outreach workers performing the survey.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 15 minutes per response, including time for listening to instructions, gathering data needed, and responding to questionnaire items.

Respondents: Migrant farmworkers, rural housing developers, and government agencies.

Estimated Number of Respondents: 6,000.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 1500 hours.

Copies of this information collection can be obtained from Jean Mosely, Regulations and Paperwork Management Branch, at (202) 692–0041.

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of RHS, including whether the information will have practical utility; (b) the accuracy of RHS' estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Jean Mosely, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, Rural Development, STOP 0742, 1400 Independence Ave. SW, Washington, DC 20250. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: May 22, 1998.

Jan E. Shadburn,

Administrator, Rural Housing Service.

[FR Doc. 98–14780 Filed 6–3–98; 8:45 am]

BILLING CODE 3410–XV–M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the South Carolina Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the South

Carolina Advisory Committee to the Commission will convene at 2:00 p.m. and adjourn at 5:00 p.m. June 25, 1998, at the Adams Mark Hotel, 1200 Hampton Street, Columbia, South Carolina 29201. The purpose of the meeting is to finalize plans for the Education in South Carolina project.

Persons desiring additional information, or planning a presentation to the Committee, should contact Bobby D. Doctor, Director of the Southern Regional Office, 404–562–7000 (TDD 404–562–7004). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, May 27, 1998.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 98–14859 Filed 6–3–98; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–791–802]

Furfuryl Alcohol from the Republic of South Africa; Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On March 6, 1998, the Department of Commerce published the preliminary results of its administrative review of the antidumping duty order on furfuryl alcohol from the Republic of South Africa. This review covers one manufacturer/exporter and the period June 1, 1996–May 31, 1997. We received no comments regarding the preliminary results, and therefore these final results are unchanged.

EFFECTIVE DATE: June 4, 1998.

FOR FURTHER INFORMATION CONTACT: Michelle Frederick or Kris Campbell, AD/CVD Enforcement Group I, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, Washington, D.C. 20230; telephone: (202) 482–0186 or 482–3813, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to the regulations last codified at 19 CFR Part 353 (April 1, 1997).

Background

This administrative review covers the period June 1, 1996–May 31, 1997 (the POR). On March 6, 1998, we published the preliminary results of this review. *See Furfuryl Alcohol from the Republic of South Africa; Preliminary Results of Antidumping Duty Administrative Review,* 63 FR 11209. In the preliminary results, we found that sales made by the one respondent in this review, Illovo Sugar Ltd. (ISL), had not been made below normal value. We gave interested parties an opportunity to comment on the preliminary results. We received no comments, and have made no changes for these final results of review.

Scope of Review

The merchandise covered by this order is furfuryl alcohol ($C_4H_3OCH_2OH$). Furfuryl alcohol is a primary alcohol and is colorless or pale yellow in appearance. It is used in the manufacture of resins and as a wetting agent and solvent for coating resins, nitrocellulose, cellulose acetate, and other soluble dyes. The product subject to this order is classifiable under subheading 2932.13.00 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Final Results of Review

As a result of this review, we determine that the following margin exists for the period June 1, 1996–May 31, 1997:

Manufacturer/exporter	Margin (percent)
Illovo Sugar Ltd	0.00

Parties to the proceeding may request disclosure of the Department's calculation methodology within five days of the date of publication of this notice.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. We will instruct the Customs Service not to assess antidumping duties on the merchandise subject to review.

Furthermore, the following deposit requirements will be effective for all shipments of furfuryl alcohol from the Republic of South Africa entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(c) of the Act: (1) the cash deposit rate for ISL is zero; (2) if the exporter is not a firm covered in this review, the previous review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (3) if neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rate will be 11.55 percent, the ''All Others'' rate established in the LTFV investigation.

These cash deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

This determination is issued and published in accordance with sections 751(a)(1)and 777(i)(1) of the Act.

Dated: May 29, 1998.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 98–14874 Filed 6–3–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

ACTION: Notice of application.

SUMMARY: The Office of Export Trading Company Affairs (''OETCA''), International Trade Administration, Department of Commerce, has received an application for an Export Trade Certificate of Review. This notice summarizes the conduct for which certification is sought and requests comments relevant to whether the Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: Morton Schnabel, Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private, treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether a Certificate should be issued. If the comments include any privileged or confidential business information, it must be clearly marked and a nonconfidential version of the comments (identified as such) should be included. Any comments not marked privileged or confidential business information will be deemed to be nonconfidential. An original and five copies, plus two copies of the nonconfidential version, should be submitted no later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 1800H, Washington, D.C. 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). However, nonconfidential versions of the comments will be made available to the applicant if necessary for determining whether or not to issue the Certificate. Comments should refer to this application as ''Export Trade Certificate of Review, application number 98–00002.'' A summary of the application follows.

Summary of the Application:

Applicant: All State Packers, Inc. (''ASP''), 6011 E. Pine Street, Lodi, California 95240.

Contact: James C. Christie, Independent Consultant, Telephone: (206) 292–6340.

Application No.: 98–00002.

Date Deemed Submitted: May 21, 1998.

Members (in addition to applicant): Carter Thomas, LLC, Davis, California.

ASP seeks a Certificate to cover the following specific Export Trade, Export Markets, and Export Trade Activities and Methods of Operation.

Export Trade

1. *Products*

Fresh California Pears.

2. *Services*

Inspection, quality control, marketing and promotional services.

3. *Technology Rights*

Proprietary rights to all technology associated with Products or Services, including, but not limited to: patents, trademarks, service marks, trade names, copyrights, trade secrets, and know-how.

4. *Export Trade Facilitation Services (as They Relate to the Export of Products, Services and Technology Rights)*

All export trade-related facilitation services, including, but not limited to: consulting and trade strategy; sales and marketing; export brokerage; foreign marketing research; foreign market development; overseas advertising and promotion; product research and design based on foreign buyer and consumer preferences; communication and processing of export orders; inspection and quality control; transportation; freight forwarding and trade documentation; insurance; billing of foreign buyers; collection (letters of credit and other financial instruments); provision of overseas sales and distribution facilities and overseas sales staff; legal, accounting and tax assistance; management information systems development and application; assistance and administration of government export assistance programs, such as the USDA Market Access and Supplier Credit programs.

Export Markets

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands and the Trust Territory of the Pacific Islands).

Export Trade Activities and Methods of Operation

In connection with the promotion and sale of ASP's and Members' Products and Services into the Export Markets, ASP and/or one or more of its Members seeks to:

1. Design and execute foreign marketing strategies for its Export Markets;

2. Prepare joint bids, establish export prices for Products and Services and establish terms of sale in the Export Markets;

3. Grant sales and distribution rights for the Products, whether or not exclusive, into designated Export Markets to foreign agents or importers (''exclusive'' meaning that ASP and Member(s) may agree not to sell the Products into the designated Export Markets through any other foreign distributor, and that the foreign distributor may agree to represent only ASP and/or Member(s) in the Export Markets and none of its competitors);

4. Design, develop and market generic corporate labels;

5. Engage in joint promotional activities directly targeted at developing the Export Markets, such as: arranging marketing trips; providing brochures, promotions and other forms of product, service and industry information; conducting international market and product research; procuring international marketing, advertising and promotional services; and sharing the cost of these joint promotional activities among ASP and the Member(s);

6. Conduct product and packaging research and development exclusively for the export of the Products, such as meeting foreign regulatory requirements and foreign buyer specifications and identifying and designing for foreign buyer and consumer preferences;

7. Negotiate and enter into agreements with governments and other foreign persons regarding non-tariff trade

barriers in the Export Markets, such as packaging requirements, and providing specialized packing operations and other quality control procedures to be followed by ASP and its Member(s) in the export of Products into the Export Markets;

8. Advise and cooperate with agencies of the U.S. Government in establishing procedures regulating the export of Member(s)' Products, Services and/or Technology Rights into the Export Markets;

9. Negotiate and enter into purchase agreements with buyers in the Export Markets regarding the export prices, quantities, type and quality of Products, time periods, and the terms and conditions of sale;

10. Broker or take title to the Products;

11. Purchase Products from non-Members whenever necessary to fulfill specific sales obligations;

12. Solicit non-Members to become Members;

13. Communicate and process export orders;

14. Assist each Member in maintaining the quality standards necessary to be successful in the Export Markets;

15. Provide Export Trade Facilitation Services with respect to Products, Services and Technology Rights;

16. Provide, procure, negotiate, contract and administer transportation services for Products in the course of export, including overseas freight transportation, inland freight transportation from the packing house to the U.S. port of embarkment, leasing of transportation equipment and facilities, storage and warehousing, stevedoring, wharfage and handling, insurance, forwarder services, trade documentation and services, customs clearance, financial instruments and foreign exchange;

17. Negotiate freight rate contracts with individual carriers and carrier conferences either directly or indirectly through shippers associations and/or freight forwarders;

18. Arrange financing through bank holding companies, governmental financial assistance programs and other arrangements;

19. Bill and collect from foreign buyers and provide accounting, tax, legal and consulting assistance and services;

20. Enter into exclusive agreements with Non-Members to provide Export Trade Services and Trade Facilitation Services;

21. Open and operate overseas sales and distribution offices and companies to facilitate the sales and distribution of the Products in the Export Markets;

22. Apply for and utilize applicable export assistance and incentive programs which are available within the governmental and private sectors, such as the USDA Market Access and Supplier Credit programs;

23. Negotiate and enter into agreements with governments and foreign persons to develop countertrade arrangements;

24. Refuse to deal with or provide quotations to other Export Intermediaries for sales of ASP and Member(s)' Products into the Export Markets; and

25. Exchange information with and among ASP and Member(s) as necessary to carry out the Export Trade Facilitation Services and Export Trade Activities and Methods of Operation, including:

a. Information about sales and marketing efforts and strategies in the Export Markets, including pricing; projected demand in the Export Markets for Products; customary terms of sale, prices and availability of Products independently committed by Member(s) for sales in the Export Markets; prices and sales of Products in the Export Markets; and specifications by buyers and consumers in the Export Markets;

b. Information about the price, quality, quantity, source and delivery dates of Products available from the Member(s) for export;

c. Information about terms and conditions of contracts for sales in the Export Markets to be considered and/or bid on by ASP;

d. Information about joint bidding, selling arrangements for the Export Markets and the allocations of export sales resulting from such arrangements among ASP and Member(s), including information regarding the allocation methods used and ASP and each Member's percentage of the total committed volume of ASP and all Member(s);

e. Information about expenses specific to exporting to and within the Export Markets, including transportation, transshipments, intermodal shipments, insurance, inland freight to port, port storage, commissions, export sales, documentation, financing and customs duties or taxes;

f. Information about U.S. and foreign legislation and regulations, including Federal marketing order programs that may affect sales to the Export Markets; and

g. Information about ASP's or its Member(s)' export operations, including sales and distribution networks established by ASP and Member(s) in the Export Markets, and prior export sales by ASP and Member(s), including export price information.

Definitions

1. *Export Intermediary* means a person who acts as distributor, sales representative, sales or marketing agent, or broker, or who performs similar functions, including providing, or arranging for the provision of, Export Trade Facilitation Services.

2. *Member* means a person who has membership in the ASP Export Trade Certificate and who has been certified as a ''Member'' within the meaning of Section 325.2(1) of the Regulations. Carter Thomas, LLC is currently the only member.

Dated: May 29, 1998.

Morton Schnabel,

Director, Office of Export Trading Company Affairs.

[FR Doc. 98–14786 Filed 6–3–98; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 051298A]

Magnuson-Stevens Act Provisions; Atlantic Shark Fisheries; Exempted Fishing Permits (EFPs)

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

ACTION: Applications for EFPs; request for comments.

SUMMARY: NMFS announces the receipt of five applications for EFPs. If granted, these EFPs would authorize, over a period of 1 year, collections for public display of a limited number of sharks from the large coastal and prohibited species groups from Federal waters in the Atlantic Ocean.

DATES: Written comments on the applications must be received on or before June 19, 1998.

ADDRESSES: Send comments to Rebecca Lent, Chief, Highly Migratory Species Management Division (F/SF1), NMFS, 1315 East-West Highway, Silver Spring, MD 20910. The applications and related documents and copies of the regulations under which exempted fishing permits are subject may also be requested from this address.

FOR FURTHER INFORMATION CONTACT: Margo Schulze, 301–713–2347; fax: 301–713–1917.

SUPPLEMENTARY INFORMATION: These EFPs are requested under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*) and regulations at 50 CFR 600.745 concerning scientific research activity, exempted fishing, and exempted educational activity.

NMFS issued an EFP to Dynasty Marine Associates, Inc., in Marathon, FL, effective March 3, 1998, for the collection of a maximum of 3 sandbar sharks, 19 nurse sharks, 22 lemon sharks, 14 sand tiger sharks, and 10 bull sharks for the purposes of public display. Dynasty Marine Associates, Inc., now intends to collect an additional 17 sandbar sharks, 10 tiger sharks, and 20 scalloped hammerhead sharks for public display by using a single hook and line as well as a short longline not consisting of more than 50 hooks. Fishing will occur in the Florida Bay and in the Atlantic Ocean off the middle Florida Keys area, off New Jersey, and off Maryland. Issuance of an EFP is necessary, according to the applicant, because the commercial season for large coastal sharks is closed for long periods of time. The applicant also requested that the EFP authorize collection of Atlantic sharpnose sharks, managed under the small coastal management unit; however, as the commercial season for small coastal sharks has not closed to date, this species may be possessed legally by obtaining a Federal commercial shark permit, and an EFP is not required.

Shore Lab, Inc., in Brandon, FL, intends to collect 12 sand tiger sharks for public display and education by using 10 bucket rigs, each of which includes a single hook and crab line that allows a shark to swim in a horizontal arc around the swivel line. Fishing will occur in the Atlantic Ocean off New Jersey. Issuance of an EFP is necessary, according to the applicant, because possession of sand tiger sharks is prohibited.

The New Jersey State Aquarium, in Camden, NJ, intends to collect a maximum of four tiger sharks, five sandbar sharks, four dusky sharks, and five sand tiger sharks for public display and research by rod and reel as well as by a short longline consisting of no more than 50 hooks. Fishing will occur in the Atlantic Ocean from Massachusetts to Florida. Issuance of an EFP is necessary, according to the applicant, because the commercial season for large coastal sharks is closed for long periods of time and because possession of sand tiger sharks is prohibited. The applicant also requested that the EFP authorize collection of Atlantic thresher and mako sharks, managed under the pelagics management unit; however, as the commercial season for pelagic sharks has not closed to date, these species may be possessed legally by obtaining a Federal commercial shark permit, and an EFP is not required.

The National Aquarium in Baltimore, Inc., in Baltimore, MD, intends to collect a maximum of five sandbar sharks, one dusky shark, and one sand tiger shark for public display and research by two bottom set longlines, each approximately 400 meters in length and consisting of no more than 40 hooks. Fishing will occur in the Atlantic Ocean off New Jersey. Issuance of an EFP is necessary, according to the applicant, because the commercial season for large coastal sharks is closed for long periods of time and because possession of sand tiger sharks is prohibited. The applicant also intends to tag and release captured sharks, collect blood samples for hematological analyses, and return to the Delaware Bay five captive sandbar sharks and possibly one sand tiger shark.

Eric Pederson and Grady Sullivan, in Marathon, FL, intend to collect a maximum total of 40 sharks for public display by rod and reel, cast net, and single hook block lines. Shark species collected may include bull sharks, sand tiger sharks, lemon sharks, sandbar sharks, blacktip sharks, tiger sharks, and nurse sharks. Fishing will occur in Federal waters off New York, Virginia, North Carolina, South Carolina, Georgia, and Florida, as well as in the Chesapeake Bay. Issuance of an EFP is necessary, according to the applicant, because the commercial season for large coastal sharks is closed for long periods of time and because possession of sand tiger sharks is prohibited. The applicant also requested an EFP to collect sawfish; however, as NMFS does not regulate sawfish at this time, no EFP is necessary to collect this species in Federal waters.

The proposed collections for public display involve activities otherwise prohibited by regulations implementing the Fishery Management Plan for Sharks of the Atlantic Ocean. The applicants require authorization to fish for and to possess large coastal sharks outside the Federal commercial seasons and to fish for and to possess prohibited species.

Based on a preliminary review, NMFS finds that these applications warrant further consideration. A final decision on issuance of EFPs will depend on the submission of all required information, NMFS' review of public comments received on the applications, conclusions of any environmental analyses conducted pursuant to the National Environmental Policy Act, and on any consultations with any appropriate Regional Fishery Management Councils, states, or Federal agencies.

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

Dated: May 29, 1998.

Bruce C. Morehead,

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

[FR Doc. 98–14873 Filed 6–3–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 050198C]

Small Takes of Marine Mammals Incidental to Specified Activities; Tatoosh Island, WA Storage Tank Removal Project

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

ACTION: Notice of proposed authorization for a small take exemption; request for comments.

SUMMARY: NMFS has received a request from the U.S. Coast Guard's Civil Engineering Unit, Oakland, CA (U.S. Coast Guard) for authorization to take small numbers of California sea lions, Pacific harbor seals, and Steller sea lions by harassment incidental to removing three underground storage tanks (USTs) and one or two above-ground storage tanks (ASTs) at the Cape Flattery Light Station on Tatoosh Island, Callam County, WA. Under the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to authorize the U.S. Coast Guard to incidentally take, by Level B harassment, small numbers of seals and sea lions in the above-mentioned area after September 1, 1998.

DATES: Comments and information must be received on or before July 6, 1998.

ADDRESSES: Comments on the application should be addressed to Chief, Marine Mammal Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225. A copy of the application, and/or a list of references used in this document may be obtained by writing to this address or by telephoning one of the contacts listed here.

FOR FURTHER INFORMATION CONTACT: Kenneth Hollingshead, Office of Protected Resources at 301–713–2055,

or Brent Norberg, Northwest Regional Office at 206–526–6733.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) directs the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Permission may be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses and that the permissible methods of taking and requirements pertaining to the monitoring and reporting of such takings are set forth. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as '' ...an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.''

Subsection 101(a)(5)(D) of the Marine Mammal Protection Act established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. The MMPA now defines ''harassment'' as:

> ...any act of pursuit, torment, or annoyance which (a) has the potential to injure a marine mammal or marine mammal stock in the wild; or (b) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering.

Subsection 101(a)(5)(D) establishes a 45-day time limit for NMFS review of an application followed by a 30-day public notice and comment period on any proposed authorizations for the incidental harassment of small numbers of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny issuance of the authorization.

Summary of Request

On April 27, 1998, NMFS received a request from the U.S. Coast Guard for authorization to take small numbers of California sea lions (*Zalophus californianus*), Pacific harbor seals (*Phoca vitulina*), and Steller sea lions (*Eumetopias jubatus*) by harassment incidental to removing three USTs and one or two ASTs at the Cape Flattery Light Station on Tatoosh Island, Callam County, WA.

The expected impact on marine mammals will be from the noise created by the arrival and departure of heavy-lift, tandem-rotor helicopters. Heavy-lift helicopters will be used to sling equipment and materials to and from the project. The most common heavy-lift helicopters commercially available in the Pacific Northwest are the Boeing 234 Chinook and Vertol 107–II.

Large equipment and materials will be slung 30 to 50 ft below the helicopter, depending upon the load's dynamics. Personnel, small equipment, and supplies will be carried internally. Materials removed from the site will include two 500–gallon (1,892.5–ltr) USTs, a 1,000–gallon (3,785–ltr) UST, contaminated water (estimated at 2,000 gallons (7,570 ltrs), contaminated soil (estimated at 15 cubic yards (11.5 m^3), a 33,000–gallon (124,905–ltr) AST, and possibly a 2,000–gallon (7,570–ltr) AST.

Removal of the USTs and ASTs will take place over a 3-week period commencing on or about September 1, 1998. During approximately 4 days of work during that 3-week period, helicopters will make approximately 23 trips to and from the site. It should be noted that this activity is required by 40 CFR part 280 subpart G, Out-of-Service UST Systems and Closure and is necessary to protect the environment from leaking UST/ASTs.

Description of Marine Mammals Affected by the Activity

California sea lions, Pacific harbor seals, and Steller sea lions are the three species expected to be impacted by the UST and AST removal. Information additional to the information provided here can be found in Barlow *et al.* (1995, 1997).

Harbor Seal

The harbor seal is the most abundant pinniped in Washington State with 319 haulouts in the state. They are present all year, but peak harbor seal abundance on land occurs from May through July or August, followed by a sharp decline in abundance in the fall and winter. Along the coast of Washington, pupping occurs in May/June. Pups are weaned at approximately 4 weeks, and nursery sites are then abandoned.

Studies of harbor seal populations in the Northwest suggest a growth rate of approximately 7.0 percent for the population from 1978 to 1993, slowing somewhat from 1991 to 1993 to approximately 3.7 percent (Huber *et al.*, 1995). In 1993, the Washington population was estimated at over 34,000 (Huber, 1995). Harbor seals are common throughout the waters of the Strait of Juan de Fuca; 200 harbor seals are estimated to be on Tatoosh Island during September (Pat Gearin, pers. comm).

California Sea Lion

The population of California sea lions ranges from Mexico to Vancouver Island (NMFS, 1992, 1997). Along Washington's outer coast, the greatest number of sea lions is present in October and November. A spring peak in numbers occurs offshore Oregon as animals from British Columbia and Washington pass Oregon and northern California as they return to rookeries in southern California.

Since nearing extinction in the early part of this century, their numbers have increased at approximately 5 percent per year (Barlow *et al.*, 1995). In the U.S., they breed during July after pupping in late May to June, primarily in the Channel Islands of California. Nearly all animals in Washington are non-breeding males. Few females and no pups have been sighted, so the breeding stock of this species will not be affected by the activity. California sea lions migrate northward into, and remain in, Washington waters from September until June. Southward migration peaks in Washington in March and April.

Population estimates for the species range from 167,000 to 188,000 (Barlow *et al.*, 1997). The number of California sea lions on Tatoosh Island during September is estimated at 50 (Pat Gearin, NMML, pers. comm).

Steller Sea Lion

The Steller sea lion has been divided into two groups along a line in the western Gulf of Alaska. In 1990, the entire sea lion population was listed as threatened under the Endangered Species Act (ESA) because of pronounced declines in the western group.

Breeding begins uniformly throughout the sea lion's range in mid-May, and the highest pup counts occur in early July (Bonnell *et al.*, 1992). These mammals prefer the outer coast of Washington and the Strait of Juan de Fuca, especially in late fall (Bonnell *et al.*, 1992). This species is common throughout most of the area, especially near the entrance to the Strait of Juan de Fuca. Hill *et al.* (1997) estimate the population size for the eastern stock of this species at

23,900. As many as 300 Steller sea lions have been found using Tatoosh haulouts during the time the project will occur (Gearin and Jeffries, 1996).

Potential Effects on Marine Mammals

The noise from the helicopters passing overhead is likely to startle any pinnipeds ashore at the time and result in their leaving the land for the water. Safety concerns will dictate the direction of arrival and departure but it is likely that many flights will be sufficiently close to one or more haul-outs that pinnipeds ashore at the time will flee to the water. Hovering, which causes the most noise, will be limited to the time it takes to unsling the equipment at the UST/AST removal site on the top of the island. Except for helicopter operations, all other activities associated with the UST/AST removals will take place either on the mainland or on top of the island and should have no effect on the seals and sea lions.

There are four haulout sites on or near Tatoosh Island, which is part of the Makah Nation. These sites are used by Steller sea lions, Pacific harbor seals, and California sea lions.

Seals and sea lions haul out onto dry land for various biological reasons, including sleep (Krieber and Barrette, 1984; Terhune, 1985), predator avoidance, and thermoregulation (Barnett, 1992). For example, harbor seals spend most of the evening and nighttime hours in the ocean (Bowles and Stewart, 1980), and hauled-out seals spend much of their daytime hours in apparent sleep (Krieber and Barrette, 1984; Terhune, 1985). In addition to sleep, seals and sea lions apparently leave the ocean to avoid aquatic predators and excessive heat loss to the sea water (Barnett, 1992).

However, the advantages of hauling out are counterbalanced by dangers of the terrestrial environment, including predators. Because of these opposing biological forces, haulout groups are often temporary, unstable aggregations (Sullivan, 1982).

The size of the haulout group is thought to be an anti-predator strategy (da Silva and Terhune, 1988). By increasing their numbers at a haulout site, seals (and sea lions) optimize the opportunities for sleep by minimizing the requirement for individual vigilance against predators (Krieber and Barrette, 1984). This relationship between seals and their predators is thought to have represented a strong selection pressure for startle behavior patterns (da Silva and Terhune, 1988). As a result, harbor seals, which have been subjected to extensive predation and hunting, rush into the water at the slightest alarm (Arseniev, 1986) unless they have become habituated to the disturbance (Lagomarsino, pers. commn.).

Startle response in harbor seals can vary from a temporary state of agitation by a few individuals to the complete abandonment of the beach area by the entire colony. Normally, when harbor seals are frightened by noise or by the approach of a boat, plane, human, or potential predator, they will move rapidly to the relative safety of the water. Depending upon the severity of the disturbance, seals may return to the original haulout site immediately, stay in the water for some length of time before hauling out, or haul out in a different area. When disturbances occur late in the day, harbor seals may not haul out again until the next day.

The total number of incidental harassment takes to the seals and sea lions is estimated by the applicant at 12,650. The number by species is: Stellers, 6,900; harbor seal, 4,600; and California sea lions, 1,150. This estimate uses the maximum potentional number of animals (550) and 23 flights. The U.S. Coast Guard believes the number should be significantly less because each flight may not have the same impact on each haulout. It is also likely that, as the noise impacts continue, animals will temporarily leave the haulout for other haulouts rather than return only to be driven away again.

Mitigation

Because access to Tatoosh Island is limited to small boats and foot traffic, use of helicopters is the only identified means to remove the UST/ASTs. The U.S. Coast Guard has scheduled the work to avoid the pupping and molting season for harbor seals.

NMFS proposes to require the helicopters remain at the greatest altitude practicable prior to landing on Tatoosh Island, to attain the greatest altitude practicable at time of takeoff, and to avoid direct overflights of the haulouts.

Monitoring and Reporting

During any time that helicopter activities are undertaken, monitoring is proposed to be conducted by a minimum of one trained biologist who is approved in advance by NMFS. Observations will be made at the haulout site nearest the planned flight path of the helicopter. If neither seals nor sea lions are ashore at the time of the flight, observations will be made at the next nearest haulout site. The U.S. Coast Guard will provide a report to NMFS within 120 days of the completion of the project. This report will provide dates and locations of operations, details of marine mammal sightings, including the number of pinipeds, by species and haulout location, that fled from the beach because of helicopter activities, the number returning subsequent to the disruption, and estimates of the amount and nature of all takes by harassment.

Consultation

Under section 7 of the Endangered Species Act, NMFS has begun consultation on the proposed issuance of an incidental harassment authorization. Consultation will be concluded upon completion of the comment period and taking into consideration those comments received on the proposed issuance of an authorization.

Conclusions

NMFS has preliminarily determined that the short-term impact of four days of helicopter flights over Tatoosh Island is expected to result in a temporary reduction in utilization of the haulout as seals and sea lions leave the beach for the safety of the water. Helicopter activity is not expected to result in any reduction in the number of harbor seals, California sea lions, or Steller sea lions, and these species are expected to continue to occupy the same area. This behavioral change is expected to have a negligible impact on the animals. Additionally, there will not be any impact on the habitat itself.

Proposed Authorization

NMFS proposes to issue an incidental harassment authorization to the U.S. Coast Guard for possible Level B harassment of small numbers of California sea lions, Pacific harbor seals, and Steller sea lions. NMFS has preliminarily determined that the proposed activities would result in the harassment of only small numbers of each of these species of marine mammals and would have no more than a negligible impact on these marine mammal stocks.

Information Solicited

NMFS requests interested persons to submit comments, information, and suggestions concerning this request (see **ADDRESSES**).

Dated: May 29, 1998.

Patricia A. Montanio,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 98–14872 Filed 6–3–98; 8:45 am]

BILLING CODE 3510–22–F

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 63 FR 28370.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 2 p.m., Monday, June 15, 1998.

CHANGES IN THE MEETING: The Commodity Futures Trading Commission changed the meeting to discuss adjudicatory matters to Tuesday, June 16, 1998 at 2:30 p.m.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 98–14962 Filed 6–2–98; 11:20 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 2:00 p.m., Friday, June 30, 1998.

PLACE: 1155 21st St., N.W., Washington, D.C., 9th Floor, Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 98–14963 Filed 6–2–98; 11:20 am]

BILLING CODE 6351–01–M

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 98–2]

In the Matter of Central Sprinkler Corporation and Central Sprinkler Company; Prehearing Conference

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of first prehearing conference.

DATES: This notice announces a prehearing conference to be held in the Matter of Sprinkler Corp., and Central Sprinkler Co. on June 16, 1998, at 10:00 a.m.

ADDRESSES: The prehearing conference will be held in hearing room 420 of the East West Towers Building, 4330 East West Highway, Bethesda, Maryland 20814.

FOR FURTHER INFORMATION CONTACT: For additional information contact Sadye E. Dunn, Secretary, U.S. Consumer Product Safety Commission, Washington, D.C.; telephone (301) 504–0800; telefax (301) 504–0127.

SUPPLEMENTARY INFORMATION: This public notice is issued pursuant to 16 CFR 1025.21(b) of the U.S. Consumer Product Safety Commission's Rules of Practice for Adjudicative Proceedings to inform the public that a prehearing conference will be held in an administrative proceeding under Section 15 of the Consumer Product Safety Act (CPSA) captioned CPSC Docket No. 98–2, In the Matter of Central Sprinkler Corp.; and Central Sprinkler Co. The Presiding Officer in the proceeding is United States Administrative Law Judge William B. Moran. The Presiding Officer has determined that, for good and sufficient cause, the time period for holding this first prehearing conference had to be extended to the date announced above, which date is beyond the fifty (50) day period referenced in 16 CFR 1025.21(a).

The public is referred to the Code of Regulations citation listed above for identification of the issues to be raised at the conference and is advised that the date, time and place of the hearing also will be established at the conference.

Substantively, the issue being litigated in this proceeding is described by the Presiding Officer as whether the "Omega" series automatic fire sprinklers, manufactured by the Central entities, do not and will not function in a significant percentage of instances and consequently are defective, presenting a "substantial product hazard" and creating a "substantial risk of injury to the public." See 15 U.S.C. 2064(a)(2) and 16 CFR 1115.4.

Should the allegations be proven, Complaint Counsel for the Office of Compliance of the U.S. Consumer Product Safety Commission seeks a finding that the product presents a substantial product hazard and that public notification be made pursuant to 15 U.S.C. 2064(c) and that other appropriate relief be directed under 15 U.S.C. 2064(d) of the CPSA as set forth in the Complaint.

Dated: June 1, 1998.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 98–14878 Filed 6–3–98; 8:45 am]

BILLING CODE 6355–01–M

DEPARTMENT OF DEFENSE

Department of the Army

Program for Qualifying Department of Defense (DOD) Brokers

AGENCY: Military Traffic Management Command, DOD.

ACTION: Notice.

SUMMARY: In previous Federal Register notice (Vol. 62, No. 27, pages 5962–5963) Monday, February 10, 1997, the Headquarters, Military Traffic Management Command (HQMTMC) announced a request for comments on the Program for Qualifying Department of Defense (DOD) Brokers. Comments received were about equally divided in favor and in opposition to the proposal. By notice published in the **Federal Register** (Vol. 63, No. 57, page 14431) Wednesday, March 25, 1998, HQMTMC announced its decision to test the broker program for a period of one year, beginning June 1, 1998. The Carrier Qualification Program is being amended to add qualification standards for brokers and to expand the Basic Agreement to include brokers. The effect is that brokers will be eligible to qualify to compete in DOD transportation procurements on the same or similar terms as other carriers, except shipments requiring Transportation Protective Service (TPS). Under MTMC's new policy, brokers, interested in competing for DOD traffic (except TPS shipments) can apply for qualification by executing the Basic Agreement, and by complying with the requirements for submission of evidence of insurance (cargo and public liability), a list of underlying carriers which the broker intends to use in the movement of DOD shipments, a performance bond, and other standard requirements. A copy of the Agreement between MTMC and brokers is available upon request. An analysis of the comments in opposition to the proposal is set forth below.

FOR FURTHER INFORMATION CONTACT: Rick Wirtz, MTOP–QQ, Telephone 703–681–6393; Headquarters, Military Traffic Management Command, ATTN: MTOP–QQ, 5611 Columbia Pike, Falls Church, Virginia 22041–5050.

SUPPLEMENTARY INFORMATION: The following comments in opposition to the broker proposal were received from industry:

Comment 1. Several comments object that MTMC's treatment of brokers in the Basic agreement is inconsistent with the definition of brokers contained in the ICC Termination Act. Thus, the National Motor Freight Traffic Association,

Incorporated (NMFTA) contends that brokers, as defined at 49 U.S.C. 13102(2), legally may not conduct carrier operations or perform transportation unless independently authorized to do so as a motor carrier or freight forwarder. Similarly, Monheim & Guilbert object that MTMC's Basic Agreement (''undertakes to carry and deliver. * * *'') converts a broker into a carrier, imposes loss and damage liability, and imposes a public liability insurance requirement. MCD Transportation, Incorporated, objects to the requirement for cargo insurance. Green Valley Transportation, Incorporated objects that MTMC is attempting to redefine a broker as a carrier, in conflict with DOT regulations. Munitions Carriers Conference contends that cargo liability and insurance are requirements for carriers, not brokers.

Response 1. These objections reflect concerns about the Department of Transportation's (DOT) enforcement of the Interstate Commerce Act, as amended by the ICC Termination Act. The Interstate Commerce Act is a statute providing for the economic regulation of certain carriers and brokers by the DOT and the Surface Transportation Board. That statute established a registration requirement for regulated carriers and brokers. However, that regulatory statute is not a procurement statute, and it does not restrict MTMC's transportation procurement authority. The DOD has the right to make its own arrangements and to contract for transportation on its own terms. The DOD has the same right in this regard as any commercial shipper. In exercising its procurement authority, MTMC has determined that brokers should be eligible to compete for DOD traffic on the same terms as other carriers. For example, MTMC has the right to contract with brokers for standards of cargo liability, without regard to whether any cargo liability is imposed on brokers by the Interstate Commerce Act. Compliance with DOT's registration requirements remains, as always, a separate obligation of regulated carriers and brokers. We will not speculate whether brokers will violate statues and regulations enforced by other agencies. Under the Basic Agreement, the broker agrees to comply with all applicable Federal, State, municipal, and other local laws and regulations.

Comment 2. The American Movers Conference contends that brokers might violate the Anti-Kickback Act by collecting commissions from motor carriers for government business, and that the brokers and motor carriers might discuss each other's rates in violation of the Certification of Independent Pricing.

Response 2. We cannot assume that brokers and motor carriers are going to violate the law when they participate in procurements for DOD traffic. The potential for illegal kickbacks and price fixing always exists in every government procurement, without regard to the participation of brokers. The possibility of illegal activities by bidders is insufficient basis to exclude brokers from competition.

Comment 3. TRISM Specialized Carriers contends that MTMC's proposal runs the risk that carriers with an unsatisfactory DOT safety rating may be employed by brokers to transport DOD shipments, presenting the possibility of a claim of negligence on the part of MTMC in the event of an injury or accident.

Response 3. MTMC must defer to the DOT in the enforcement of DOT's safety ratings and regulations. As a general rule, shippers are not legally liable for the accidents of carriers hired to transport their goods. In any case, MTMC's Basic Agreement will require brokers to purchase a minimum of $1 million public liability insurance.

Comment 4. NMFTA and American Road Line contend that the qualification requirements for brokers are less onerous than the requirements for motor carriers, thereby giving brokers an unwarranted competitive advantage. NMFTA contends this violates the mandate for full and open competition in the Armed Services Procurement Act.

Response 4. The purpose of the proposed Basic Agreement with brokers is to enable brokers to compete for DOD traffic. There is no reason to believe that continued exclusion of brokers form competition for DOD traffic will somehow contribute to full and open competition. The qualification requirements set forth in the Basic Agreement for brokers are identical to those contained in the Basic Agreement for freight forwarders and shipper agents. It would serve no useful purpose to impose on brokers our requirements governing vehicles and drivers of motor carriers, because brokers, unlike motor carriers, generally do not have vehicles and drivers.

George R. McDonald,

Chief, Qualification Division, ADCSOPS-Quality.

[FR Doc. 98–14854 Filed 6–3–98; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Exclusive License Announcement

AGENCY: U.S. Army Research Laboratory.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.7(a)(1)(I), announcement is made of prospective exclusive license of U.S. Patent 5,609,290, ''Fluxless Soldering Method'', for the purpose of manufacturing, using, and selling the processes involved in this invention.

This invention is described as a Fluxless Soldering Method. One of the seven inventors of this invention has assigned his rights to the United States of America as represented by the Secretary of the Army, Washington, DC. The other six inventors have assigned their rights to the University of North Carolina at Charlotte which has exclusively licensed all of its interest to Integrated Electronics Innovations, Inc.

Under the authority of Section 11(a)(2) of the Federal Technology Transfer Act of 1986 (Public Law 99–502) and Section 207 of Title 35, United States Code, the Department of the Army, as represented by the Army Research Laboratory, intends to grant a limited term exclusive or partially exclusive license of the above named patent to Integrated Electronics Innovations, Inc., a small business which is interested in manufacturing, using, and/or selling the processes involved in this invention.

FOR FURTHER INFORMATION CONTACT:

Ms. Norma Cammarata, Technology Transfer Manager, Army Research Laboratory, Attn: AMSRL–CP–TA, 2800 Powder Mill Road, Adelphi, MD 20783–1145, 301–394–2952 phone, 301–394–5818 fax, NORMAC@ARL.MIL, email.

SUPPLEMENTARY INFORMATION: Pursuant to 37 CFR 404.7(a)(1)(I), any interested party may file written objections to this prospective exclusive license arrangement. Written objections should be directed to the above address on or before 60 days from the publication of this notice.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 98–14853 Filed 6–3–98; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for the Raritan Bay-Sandy Hook Bay, Port Monmouth, New Jersey

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: The New York District of the U.S. Army Corps of Engineers (Corps) is preparing a Draft Environmental Impact Statement (DEIS) for proposed measures to provide flood control and storm damage protection in Port Monmouth, New Jersey. For this Notice of Intent, the Corps is considering protection measures to reduce damages caused by flooding and coastal storms. The EIS will be prepared according to the U.S. Army Corps of Engineers procedures for implementing the National Environmental Policy Act of 1969, as amended, (NEPA) 42 U.S.C. 4332(2)(C), and consistent with the U.S. Army Corps of Engineers' policy to facilitate public understanding and scrutiny of agency proposals. This notice of intent is published as required by the President's Council on Environmental Quality regulations implementing the provisions of NEPA, 40 CFR Parts 1500–1508.

FOR FURTHER INFORMATION CONTACT: Questions regarding the action can be addressed to Mark H. Burlas, Project Environmental Manager, phone (212) 264–4663, U.S. Army Corps of Engineers, New York District, Planning Division, 26 Federal Plaza, New York, New York 10278–0090.

SUPPLEMENTARY INFORMATION:

1. *Authorization.* The Raritan Bay-Sandy Hook Bay flood control and shore protection project was authorized by the U.S. House of Representatives, Committee of Public Works and Transportation, adopted August 1, 1990.

2. *Location of the Proposed Action.* The project area is located in the Port Monmouth section of Middletown Township, Monmouth County, New Jersey. The study area is approximately 1.5 miles long and is bounded by Comptons Creek to the east, Pews Creek to the west, New Jersey State Highway 36 to the south and the Raritan Bay-Sandy Hook Bay to the north.

3. *Reasonable Alternative Actions.* In addition to the ''No Action'' alternative, the flood control component of the feasibility study will evaluate alternatives such as buy-outs, storm gates and floodwalls to avoid and minimize impacts to coastal wetlands, as well as various levee layouts and heights. The shore protection component will analyze alternatives such as the expansion of existing dunes and various improvements to existing beaches.

4. *Significant Issues Requiring In-Depth Analysis.* 1. Coastal Wetlands Impacts; 2. Impacts to Aquatic Resources; 3. Archaeological and Cultural Resources Impacts; 4. Hydrology Impacts; 5. Economic Impacts.

5. *Environmental Review and Consultation.* Review will be conducted as outlined in the Council on Environmental Quality regulations dated November 29, 1983 (40 CFR Parts 1500–108) and U.S. Army Corps of Engineers regulation ER 200–2–2 dated March 4, 1988.

6. *Estimated Date of DEIS Availability:* July 1998.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 98–14852 Filed 6–3–98; 8:45 am]

BILLING CODE 3710–06–M

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for the Truckee Meadows, Nevada General Reevaluation Report

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: The U.S. Army Corps of Engineers (Corps), lead agency under the National Environmental Policy Act intends to prepare a draft EIS evaluating the environmental effects of flood control, environmental restoration, and recreation proposed for Truckee Meadows, Sparks, and downtown Reno. The Corps is working with Washoe County and the cities or Reno and Sparks to provide this protection.

FOR FURTHER INFORMATION CONTACT: Questions concerning the proposed action and draft EIS should be addressed to Ms. Patricia Roberson, Planning Division, Environmental Resources Branch, Corps of Engineers, 1325 J Street, Sacramento, California 95814–2922, telephone (916) 557–6705.

SUPPLEMENTARY INFORMATION:

1. *Project Location:* The Truckee River basin in eastern California and western Nevada encompasses about 3,060 square miles. The drainage area upstream from Reno includes 1,067 square miles of mountainous terrain on the eastern slope of the Sierra Nevada, the crest of which forms the western boundary of the basin. The primary study area includes the Truckee River in Washoe and Storey Counties, Nevada, at and below Reno, Sparks, and the Truckee Meadows. The Truckee Meadows encompasses an area along the Truckee River from the central part of Reno on the west to the Virginia and Pah Pah Mountain Ranges on the east, south along Steamboat Creek to Huffaker Hills, and includes Sparks to the north.

2. *Proposed Action and Alternatives:* Alternatives to address resource problems and needs identified to date will include: (1) flood control improvements along the Truckee River in the Truckee Meadows, (2) non-structural flood control measures through downtown Reno, (3) improving Lake Tahoe operation for flood control, (4) environmental restoration measures, and (5) recreation features.

3. *Scoping Process:*

a. ''Scoping'' is a process to identify the action, alternatives, and effects to be evaluated in an environmental document. The public is invited to assist the Corps and non-Federal sponsor in scoping this EIS. The process provides an opportunity for the public to identify significant resources with the study area that may be affected by the project. To facilitate this involvement, a public scoping meeting will be held in Reno, Nevada on June 10, 1998, from 5:30 to 7:30 p.m. at the Washoe County Department of Water Resources, 4930 Energy Way, Reno, Nevada. Individuals, organizations, and agencies are also encouraged to submit written scoping comments by July 10, 1998.

b. After the draft EIS is prepared, it will be circulated to all interested parties for review and comment. Public meetings will be held to receive verbal and written comments. All comments will be considered and responded to in the final EIS.

4. *Availability:* The draft EIS is scheduled to be distributed for public review and comment in spring 1999.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 98–14851 Filed 6–3–98; 8:45 am]

BILLING CODE 3710–EZ–M

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of an Additional Public Hearing in Great Mills, MD for the Draft Environmental Impact Statement for Increased Flight and Related Operations in the Patuxent River Complex, Patuxent River, MD

AGENCY: Department of the Navy.

ACTION: Notice.

SUMMARY: The Department of the Navy (DON) has prepared and filed with the U.S. Environmental Protection Agency (EPA) the Draft Environmental Impact Statement (DEIS) for River Increased Flight and Related Operations in the Patuxent River Complex, Patuxent River, MD. The DON announced in the May 22, 1998 **Federal Register** that three public hearings would be held to provide information and to receive public input on the DEIS. The DON announces that it will hold an additional fourth public hearing in Great Mills, MD to inform the public of the Patuxent findings and to receive oral and written comments on the DEIS. Federal, state and local agencies, and interested individuals are invited to be present or represented at the hearing.

DATES: The additional public hearing date and location is: Monday, June 22, 1998, 7:00 to 8:30 p.m. at Great Mills High School, 21130 Great Mills Road, Great Mills, MD.

An open information session, beginning at 5:00 p.m., will precede the scheduled formal public hearing at 7:00 p.m. The open information session will allow individuals to review the results of the analysis presented in the DEIS and Navy representatives will be available to answer questions and/or clarify information related to the DEIS.

FOR FURTHER INFORMATION TO PROVIDE COMMENTS OR FOR A COPY OF THE DEIS CONTACT: Ms. Sue Evans or Ms. Kelly Burdick, c/o Office of Legal Counsel, 47031 Liljencrantz Road, Building 435, MS 39; Patuxent River, Maryland 20670–5440

SUPPLEMENTARY INFORMATION: Pursuant to Council on Environmental Quality regulations (40 CFR parts 1500–1508) implementing the procedural provisions of the National Environmental Policy Act, the DON has prepared and filed with the EPA, the DEIS for Increased Flight and Related Operations in the Patuxent River Complex, Patuxent River, Maryland. The DEIS identifies and evaluates the potential environmental impacts in test areas of the Patuxent River Complex that are controlled and scheduled by the Naval Air Warfare Center, Aircraft Division (NAWCAD). The complex includes all the flight and ground test facilities at NAS Patuxent River and OLF Webster Field Annex, as well as the restricted airspaces, aerial and surface firing range, and targets (Hooper, Hannibal, and Tangier Island) comprising the Chesapeake Test Range (CTR). The DEIS assesses the impacts of the no action alternative and three proposed future operations workload alternatives. The no action alternative would maintain the complex's current level of flight hours into the future (18,400 annually, which represents an approximate ten-year average of annual flight hours). The three workload alternatives propose increases in baseline operations by as few as 2,500 annual flight hours or as many as 6,200 annual flight hours.

A Notice of Intent to prepare the EIS was published in the **Federal Register** on April 1, 1997 and five scoping meetings were held between May 6 and May 15, 1997. A Notice of Availability of the DEIS was published in the **Federal Register** on May 15, 1998.

The DEIS has been distributed to various federal, state and local agencies, elected officials, special interest groups, the media, and concerned citizens. In addition, copies are available for review at 18 repositories around the Chesapeake Bay: Anne Arundel South County Branch Library, Deale, MD.; Caroline County Public Library, Denton, MD.; Calvert County Public Library, Prince Frederick, MD.; Dorchester County Central Library, Cambridge, MD.; Somerset County Libraries, Deale Island, Princess Anne, and Ewell (Smith Island), MD.; St. Mary's County Libraries, Lexington Park and Leonardtown, MD.; St. Mary's College Library, St. Mary's City, MD.; Talbot County Libraries, Easton and Oxford, MD.; Worcester County Library, Pocomoke City, MD.; Eastern Shore Public Library, Accomac, VA.; Central Rappahannock Law Library, Fredericksburg, VA.; Northumberland County Library, Heathsville, VA.; Tangier Island Public School Library, Tangier, VA.; Laurel Public Library, Laurel, DE.

Federal, state and local agencies, and interested individuals are invited to attend or be represented at the hearing. All statements, both oral and written, will become part of the public record on the DEIS and will be responded to in the Final Environmental Impact Statement and will be given equal consideration. Written comments on the DEIS should be mailed to the address above and must be postmarked not later than 5:00 p.m. on July 6, 1998 to be part of the official record. Written comments will also be accepted via e-mail at the Internet website at http://www.tamsconsultants.com/paxriver/, by facsimile at (301) 342–1840, or by calling toll-free (888) 276–5201.

Dated: June 1, 1998.

Lou Rae Langevin,

Lieutenant, Judge Advocate General's Corps, U.S. Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 98–14860 Filed 6–3–98; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Inventions for Licensing; Government-Owned Inventions

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The inventions listed below are assigned to the United States Government as represented by the Secretary of the Navy and are available for licensing by the Department of the Navy.

Patent Application entitled ''Method for Fabricating an Electrically Addressable Silicon-on-Sapphire Light Valve,'' filed March 25, 1998, Navy Case No. 79029.

ADDRESSES: Requests for copies of the patent applications cited should be directed to the Office of Naval Research, ONR OOCC, Ballston Tower One, 800 North Quincy Street, Arlington, Virginia 22217–5660 and must include the Navy Case numbers.

FOR FURTHER INFORMATION CONTACT: Mr. R.J. Erickson, Staff Patent Attorney, Office of Naval Research, ONR OOCC, Ballston Tower One, 800 North Quincy Street, Arlington, Virginia 22217–5660, telephone (703) 696–4001.

(Authority: 35 U.S.C. 207, 37 CFR part 404)

Dated: May 22, 1998.

Lou Rae Langevin,

Lt, JAGC, USN, Alternate Federal Register Liaison Officer.

[FR Doc. 98–14793 Filed 6–3–98; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent to Grant Exclusive Patent License; Optron Systems, Inc.

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant

to Optron Systems, Inc., a revocable, nonassignable, exclusive license in the United States, to practice the Government-owned inventions described in Navy Case No. 79043 entitled ''Ultra-High Resolution Liquid Crystal Display on Silicon-on-Sapphire,'' and Navy Case No. 79029 entitled ''Method for Fabricating an Electrically Addressable Silicon-on-Sapphire Light Valve.''

DATES: Anyone wishing to object to the grant of this license must file written objections along with supporting evidence, if any, not later than August 3, 1998.

ADDRESSES: Written objections are to be filed with the Office of Naval Research, ONR 00CC, Ballston Tower One, 800 North Quincy Street, Arlington, Virginia 22217–5660.

FOR FURTHER INFORMATION CONTACT: Mr. R.J. Erickson, Staff Patent Attorney, Office of Naval Research, ONR 00CC, Ballston Tower One, 800 North Quincy Street, Arlington, Virginia 22217–5660, telephone (703) 696–4001.

(Authority: 35 U. S. C. 207, 37 CFR part 404)

Dated: May 22, 1998.

Lou Rae Langevin,

Lt, JAGC, USN, Alternate Federal Register Liaison Officer.

[FR Doc. 98–14794 Filed 6–3–98; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF ENERGY

Office of Arms Control and Nonproliferation

Proposed Subsequent Arrangement Concerning Reciprocal Arrangements for Exchanges of Information and Visits Under the Agreement for Cooperation for the Peaceful Uses of Nuclear Energy Between the Government of the United States and the Government of the People's Republic of China

AGENCY: Department of Energy.

ACTION: Subsequent arrangement.

SUMMARY: Notice is hereby given of the proposed ''subsequent arrangement'' under the Agreement for Cooperation Between the Government of the United States and the Government of the People's Republic of China Concerning the Peaceful Uses of Nuclear Energy, signed July 23, 1985 (''the Agreement''). The Government of the United States and the Government of the People's Republic of China will establish mutually acceptable reciprocal arrangements for exchanges of information and visits to material, facilities, and components subject to the Agreement. The framework for executing the proposed exchanges under the Agreement is established in a Memorandum of Understanding (MOU), initialed on June 23, 1987, and signed by the Government of the United States and the Government of the People's Republic of China on May 6, 1998.

Consistent with the Department of Energy's Notice of Intent, published February 10, 1998, 63 FR 6733, the Department is publishing, below, the Memorandum of Understanding Between the United States and the People's Republic of China describing reciprocal arrangements for U.S. monitoring of nuclear transfers to the People's Republic of China under the Agreement for Cooperation Between the Government of the United States and the Government of the People's Republic of China Concerning the Peaceful Uses of Nuclear Energy.

I have determined that the reciprocal arrangements, as provided in the Agreement in the U.S.-China Memorandum of Understanding, are not inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

Dated: May 27, 1998.

For the Department of Energy.

Michael V. McClary,

Acting Director, Office of Arms Control and Nonproliferation.

The text of the U.S.-China Memorandum of Understanding follows.

Memorandum of Understanding

The Government of the United States of America and the Government of the People's Republic of China (the ''parties'');

Desiring to implement the Agreement for Cooperation between the Government of the United States of America and the Government of the People's Republic of China Concerning Peaceful Uses of Nuclear Energy, signed July 23, 1985, and entered into force December 30, 1985 (the ''Agreement''), on the basis of mutual respect for sovereignty, non-interference in each other's internal affairs, equality and mutual benefit, and

Desiring to exchange experience, strengthen technical cooperation between the parties, ensure that the provisions of the Agreement are effectively carried out, and enhance a stable, reliable, and predictable nuclear cooperation relationship,

Have established the following arrangements:

1. Each party shall invite personnel designated by the other party to visit the material, facilities and components subject to the Agreement, affording them the opportunity to observe and exchange views on, and share technical experience in, the utilization or operation of such items. Opportunities to visit shall be accorded annually to reactors including their auxiliary storage pools for the fuel. Such annual visits shall be arranged at the time of reactor fueling if it occurs. Opportunities to visit all other items shall not be less often than every two years. When either party identifies special circumstances, the parties shall consult, at the request of either party, for the purpose of making mutually acceptable arrangements for the addition or reduction of visits under such circumstances in order to ensure that the objectives of Article 8(2) are fulfilled.

2. When material, facilities or components are transferred pursuant to the Agreement, the recipient party shall confirm receipt to the supplier party through diplomatic channels within 30 days after the arrival of the material, facilities or components in the territory of the recipient party. At the request of either party, the parties shall exchange information on the material, facilities and components subject to the Agreement. Such information shall include the isotopic composition, physical form, and quantity of the material, and places where the material, facilities or components are used or kept. It shall also include information on the operation of the facilities subject to the Agreement which in the case of a reactor shall cover thermal energy generated and loading. The parties shall seek to resolve any discrepancies through diplomatic channels. The information shall be treated as confidential.

The above arrangements fulfill the requirements of Article 8(2) of the Agreement for the types of peaceful nuclear activities pursuant to the Agreement that each party had planned as of the date of entry into force of the Agreement. These arrangements shall enter into force upon signature and shall remain in force so long as the provisions of Article 8(2) continue in effect. Either party may request a revision of these arrangements, including the frequency, occasion or content of visits, at any time; any revision shall be made by mutual agreement.

Done at Washington this sixth day of May, 1998, in the English and Chinese languages, both texts being equally authentic.

For the Government of the People's Republic of China:

Robert J. Einhorn.

For the Government of the United States of America:

Zheng Lizhong.

[FR Doc. 98–14523 Filed 6–3–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–43–003]

Anadarko Gathering Company; Notice of Compliance Filing

May 29, 1998.

Take notice that on May 18, 1998, Anadarko Gathering Company (Anadarko), filed a report to comply with Ordering Paragraph (E) and Appendix E of the Commission's September 10, 1997, Order Denying Petitions for Adjustment and Establishing Procedures for the Payment of Refunds issued in Docket No. RP97–369–000, *et al.* Anadarko states that its report shows the amounts received from producers (with principal and interest shown separately), and any producers who still owe refunds.

Anadarko states that its May 18, report is subject to the reservations, conditions, limitations and qualifications set forth in Anadarko's Statements of Refunds Due, which have been previously filed with the Commission in the above-captioned docket. In addition, Anadarko notes that it recently filed with, the Kansas Corporation Commission (KCC), a petition addressing, inter alia, the nature and scope of Anadarko's obligation to pay refunds at issue in this proceeding, in light of the factual circumstance.

A copy of this filing was submitted to the Commission and to all parties, for information purposes. Further, Anadarko intends shortly to file with KCC information regarding the potential distribution of refunds by the party or parties found to be responsible for payments of refunds.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed 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 proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–14814 Filed 6–3–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–42–005]

ANR Pipeline Company; Notice of Refund Report

May 29, 1998.

Take notice that on May 26, 1998, ANR Pipeline Company (ANR) filed a report of the refunds. This filing was made pursuant to a September 10, 1997, order of the Federal Energy Regulatory Commission issued at Docket Nos. RP97–369–000 et al.

ANR's report of refunds summarizes the status of refunds owed to ANR for Kansas ad valorem tax overpayments. ANR states, because the issue of whether ANR has any obligation to flow through the refunds paid to its customers is pending before the Commission, no producer refunds have been flowed through.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before June 5, 1998. 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 proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–14813 Filed 6–3–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ES98–10–001]

California Power Exchange Corporation; Notice of Application

May 29, 1998.

Take notice that on May 8, 1998, California Power Exchange Corporation (PX), filed an amendment application, under Section 204 of the Federal Power Act. The amendment seeks authorization to issue up to $300 million of long-term debt, instead of short-term debt, and PX also seeks to change the authorization period of issuance to December 31, 2001. PX also requests a waiver of the Commission's competitive bid or negotiated placement requirements, under 18 CFR 34.2, Placement of Securities.

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 385.214). All such motions and protests should be filed on or before June 12, 1998. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–14817 Filed 6–3–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1417–001]

Central Nebraska Public Power and Irrigation District and Nebraska Public Power District; Notice of Settlement Offer

May 29, 1998.

Take notice that on May 15, 1998, the Central Nebraska Public Power and Irrigation District, Nebraska Public Power District, U.S. Department of the Interior, State of Wyoming, State of Colorado, Sierra Club, Nebraska Wildlife Federation, American Rivers,

National Audubon Society, and Platte River Whooping Crane Critical Habitat Maintenance Trust filed an offer of settlement for the Kingsley Dam Project (FERC No. 1417) and the North Platte/Keystone Diversion Project (FERC No. 1835) per Rule 602 of the Commission's Rules of Practice and Procedure, 18 CFR 385.602.

Comments on the proposed settlement may be filed with Commission no later than June 4, 1998, and replies no later than June 15, 1998. Copies of comments and replies by parties and intervenors must be served on all other parties and intervenors. Under Rule 602(f)(3), a failure to file comments constitutes a waiver of all objections to the offer of settlement.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–14809 Filed 6–3–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–53–004]

KN Interstate Gas Transmission Company; Notice of Refunds Distributed and Due for Kansas Ad Valorem Taxes

May 29, 1998.

Take notice that on May 18, 1998, KN Interstate Gas Transmission Company (KNI), filed a summary statement of refunds due for Kansas ad valorem taxes pursuant to the Commission's September 10, 1997, letter order in Docket No. GP97–3–000, *et al.* The report summarizes the calculation of refund amounts received from producers to date and how much is still due, including principle and interest. The workpapers show KNI has received $5,028,711 through April 9, 1998, out of a total $25,380,970 billed to producers.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before June 5, 1998. 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 proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–14815 Filed 6–3–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2596–002 New York]

Rochester Gas & Electric Corporation; Notice Soliciting Applications

May 29, 1998.

On November 10, 1997, Rochester Gas & Electric Corporation (RG&E), the existing licensee for the Station 160 Hydroelectric Project No. 2596, filed a letter withdrawing its pending application for subsequent license for the project. The original license for Project No. 2596 expired December 31, 1993, and the project is currently operating under an order requiring continued project operation issued on January 21, 1994.

On November 19, 1997, the Commission disallowed the withdrawal of the license application until after Commission review and approval of an application to surrender the license for the project. On March 31, 1998, RG&E filed an application to surrender the license for Project No. 2596.

The project is located on the Genesee River, in Livingston County, New York. The project consists of: (1) an existing reservoir with a surface area of 4.5 acres and a total storage volume of 480 acre-feet at the normal maximum surface elevation of 579.1 feet mean sea level (msl); (2) an existing dam, about 334 feet long, comprised of (a) an existing stone masonry wingwall; (b) an existing uncontrolled spillway section with a crest elevation of 579.1 feet msl, constructed of cut stone, with concrete footings, 257 feet long; and (c) an existing 23-foot-long spillway section controlled with timber gates; (3) an existing concrete and masonry powerhouse with a Francis turbine-generator unit rated at 340 kW; (4) an existing 18-foot-long concrete spillway; and (5) appurtenant equipment and facilities.

Pursuant to Section 16.20 of the Commission's Regulations, the deadline for filing an application for subsequent license and any competing license applications was December 31, 1991. There are no other pending applications for license for this project. Because the existing licensee has requested to withdraw its application and surrender its license, the situation is similar to that contemplated by Section 16.25 of the Commission's Regulations, which applies when an existing licensee files a notice of intent to file a new license application and then fails to do so. In these circumstances, Section 16.25 of the Commission's Regulations, the Commission is soliciting applications from potential applicants other than the existing licensee.

A potential applicant that files a notice of intent within 90 days from the date of issuance of this notice: (1) may apply for a license under Part I of the Federal Power Act and Part 4 (except Section 4.38) of the Commission's regulations within 18 months of the date on which it files its notice; and (2) must comply with the requirements of Section 16.8 of the Commission's Regulations.

Pursuant to Section 16.19 of the Commission's Regulations, the licensee is required to make available certain information described in Section 16.7 of the Commission's regulations. Such information is available from the licensee at Rochester Gas & Electric Corporation, 89 East Avenue, Rochester, NY 14649.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–14810 Filed 6–3–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–566–000]

Southern Natural Gas Company; Notice of Request Under Blanket Authorization

May 29, 1998.

Take notice that on May 22, 1998, Southern Natural Gas Company (Southern), Post Office Box 2563, Birmingham, Alabama 35202–2563, filed in Docket No. CP98–566–000 a request pursuant to Sections 157.205 and 157.218 of the Commission's Regulations under the Natural Gas Act (118 CFR 157.205, 157.218) for authorization to abandon a measurement facility at a delivery point location, under Southern's blanket certificate issued in Docket No. CP82–406–000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Southern states that it constructed the delivery point facility to exchange natural gas with Texas Gas

Transmission Corporation (Texas Gas) at a point on Southern's 20-inch Northern Main Line in Ouachita Parish, Louisiana (Texas Gas Exchange Station), under an agreement dated September 5, 1956. Southern states that the exchange service was authorized to be abandoned by Commission order dated April 30, 1998 in Docket No. CP98–173–000. Southern states that it no longer provides service to Texas Gas at this location and, accordingly, requests authorization to abandon the Texas Gas Exchange Station.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–14812 Filed 6–3–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–562–000]

Williston Basin Interstate Pipeline Company, Notice of Request Under Blanket Authorization

May 29, 1998.

Take notice that on May 20, 1998, Williston Basin Interstate Pipeline Company, (Applicant), 200 North Third Street, Suite 300, Bismarck, North Dakota, 58501, filed in Docket No. CP98–562–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.211) for approval to utilize an existing tap to effectuate natural gas transportation deliveries to Montana-Dakota Utilities for ultimate use by additional end-use customers in McCone County, Montana, under Applicant's blanket certificate issued in Docket No. CP82–487–000, pursuant to Section 7(c) of the Natural Gas Act (NGA), all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Applicant submits that it was authorized to acquire and operate this tap pursuant to the Commission's Order dated February 13, 1985, in Docket Nos. CP82–487–000, *et al.* Applicant proposes herein to utilize this existing tap to effectuate additional natural gas transportation deliveries to Montana-Dakota for other than right-of-way grantor use. Applicant states that it plans to provide natural gas transportation deliveries to Montana-Dakota for ultimate use by additional end-use customers under Applicant's Rate Schedule FT–1 and/or IT–1.

Applicant asserts that the estimated additional volume to be delivered is 330 Dkt per year and that the proposed service will have no significant effect on Applicant's peak day or annual requirements. Applicant further asserts that capacity has been determined to exist on Applicant's system to serve this natural gas market.

Any person or the Commission's Staff may, within 45 days of the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214), a motion to intervene and pursuant to Section 157.205 of the regulations under the Natural Gas Act (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefor, the proposed activities shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–14811 Filed 6–3–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–164–002]

Wyoming Interstate Company; Notice of Tariff Compliance Filing

May 29, 1998.

Take notice that on May 26, 1998, Wyoming Interstate Company, Ltd. (WIC), tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, Sub Second Revised Sheet No. 16B, Substitute First Revised Sheet No. 17A; and for its Second Revised Volume No. 2 tariff Substitute Fifth Revised Sheet No. 25, Substitute Second Revised Sheet No. 26, Substitute Sixth Revised Sheet No. 39 and Substitute First Revised Sheet No. 64G to be effective May 1, 1998.

WIC states the tariff sheets are filed in compliance with the order issued April 30, 1998 in Docket No. RP98–164–000, as well as Section 154.203 of the Commission's Regulations.

WIC further states that copies of this compliance filing have been served on WIC's jurisdictional customers and public bodies.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed 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 proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–14816 Filed 6–3–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG98–55–000, et al.]

AES Alamitos, L.L.C., et al., Electric Rate and Corporate Regulation Filings

May 29, 1998.

Take notice that the following filings have been made with the Commission:

1. AES Alamitos, L.L.C.

[Docket No. EG98–55–000]

Take notice that on May 22, 1998, AES Alamitos, L.L.C., filed with the Commission a second supplement to its application for determination of exempt wholesale generator status under Part 365 of the Commission's Regulations. The second supplement concerns the sale of black start capability.

A sworn verification accompanies the second supplemental filing. AES Alamitos, L.L.C., states that copies of the supplemental filing have been served on the California Public Utilities

Commission and the U.S. Securities and Exchange Commission.

Comment date: June 17, 1998, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. AES Huntington Beach, L.L.C.

[Docket No. EG98–56–000]

Take notice that on May 22, 1998, AES Huntington Beach, L.L.C., filed with the Commission a second supplement to its application for determination of exempt wholesale generator status under Part 365 of the Commission's Regulations. The second supplement concerns the sale of black start capability.

A sworn verification accompanies the second supplemental filing. AES Huntington Beach, L.L.C., states that copies of the supplemental filing have been served on the California Public Utilities Commission and the U.S. Securities and Exchange Commission.

Comment date: June 17, 1998, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

3. AES Redondo Beach, L.L.C.

[Docket No. EG98–57–000]

Take notice that on May 22, 1998, AES Redondo Beach, L.L.C., filed with the Commission a second supplement to its application for determination of exempt wholesale generator status under Part 365 of the Commission's Regulations. The second supplement concerns the sale of black start capability.

A sworn verification accompanies the second supplemental filing. AES Redondo Beach, L.L.C., states that copies of the supplemental filing have been served on the California Public Utilities Commission and the U.S. Securities and Exchange Commission.

Comment date: June 17, 1998, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

4. Cedar Bay Generating Company, L.P.

[Docket No. EG98–78–000]

Take notice that on May 19, 1998, Cedar Bay Generating Company, L.P. (Applicant), with its principal office at 7500 Old Georgetown Road, Bethesda, Maryland 20814–6161, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Section 32 of the Public Utility Holding Company Act of 1935 and Part 365 of the Commission's Regulations.

Applicant states that it will be engaged in owning and operating the Cedar Bay project consisting of an approximately 285 megawatt (gross) cogeneration facility and related transmission interconnection facilities located in Jacksonville, Florida (the Eligible Facility) and selling electric energy exclusively at wholesale. Electric energy produced by the Eligible Facility is sold exclusively at wholesale.

Comment date: June 18, 1998, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

5. MASSPOWER

[Docket No. EG98–79–000]

Take notice that on May 19, 1998, MASSPOWER (Applicant), with its principal office at One Bowdoin Square, Boston, MA 02114–2910, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Section 32 of the Public Utility Holding Company Act of 1935 and Part 365 of the Commission's Regulations.

Applicant states that it is and will be engaged in owning and operating the MASSPOWER project consisting of a cogeneration facility located in Springfield, Massachusetts (the Eligible Facility), with net generating capacity of approximately 270 megawatts in the winter months and approximately 231.5 megawatts in the summer months, and related transmission interconnection facilities, and selling electric energy exclusively at wholesale. Electric energy produced by the Eligible Facility is sold exclusively at wholesale.

Comment date: June 17, 1998, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

6. Northampton Generating Company, L.P.

[Docket No. EG98–80–000]

Take notice that on May 19, 1998, Northampton Generating Company, L.P. (Applicant), with its principal office at 7500 Old Georgetown Road, Bethesda, Maryland 20814–6161, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Section 32 of the Public Utility Holding Company Act of 1935 and Part 365 of the Commission's Regulations.

Applicant states that it is and will be engaged in owning and operating the Northampton project consisting of an approximately 110 megawatt (net) small power production facility and related transmission interconnection facilities located in Northampton County, Northampton, Pennsylvania (the Eligible Facility) and selling electric energy exclusively at wholesale. Electric energy produced by the Eligible Facility is sold exclusively at wholesale.

Comment date: June 17, 1998, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

7. Indiantown Cogeneration, L.P.

[Docket No. EG98–81–000]

Take notice that on May 19, 1998, Indiantown Cogeneration, L.P. (Applicant), with its principal office at 7500 Old Georgetown Road, Bethesda, Maryland 20814–6161, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Section 32 of the Public Utility Holding Company Act of 1935 and Part 365 of the Commission's Regulations.

Applicant states that it will be engaged in owning and operating the Indiantown project, consisting of an approximately 330 megawatt (net) cogeneration facility located adjacent to Caulkins Indiantown Citrus Company's plant near Indiantown, Florida (the Eligible Facility), and related transmission interconnection facilities, and selling electric energy exclusively at wholesale. Electric energy produced by the Eligible Facility is sold exclusively at wholesale.

Comment date: June 15, 1998, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

8. Atlantic City Electric Company

[Docket No. ER96–1361–005]

Take notice that on May 27, 1998, Atlantic City Electric Company filed a compliance refund report.

Comment date: June 16, 1998, in accordance with Standard Paragraph E at the end of this notice.

9. PP&L, Inc.

[Docket No. ER98–1110–000]

Take notice that on May 27, 1998, PP&L, Inc., (PP&L), tendered for filing a fully executed Service Agreement between PP&L and Enron Power Marketing, Inc., to replace the partially executed Service Agreement filed on December 17, 1997.

Comment date: June 16, 1998, in accordance with Standard Paragraph E at the end of this notice.

10. Long Island Lighting Company

[Docket No. ER98–3105–000]

Take notice that on May 27, 1998, Long Island Lighting Company (LILCO), filed an Electric Power Service Agreement between LILCO and FirstEnergy Trading and Power Marketing Inc., entered into on May 12, 1998.

The Electric Power Service Agreement listed above was entered into under LILCO's Power Sales Umbrella Tariff as reflected in LILCO's amended filing on February 6, 1998, with the Commission in Docket No. OA98–5–000. The February 6, 1998, filing essentially brings LILCO's Power Sales Umbrella Tariff in compliance with the unbundling requirements of the Commission's Order No. 888.

LILCO requests waiver of the Commission's sixty (60) day notice requirements and an effective date of May 12, 1998, for the Electric Power Service Agreement listed above because in accordance with the policy announced in Prior Notice and Filing Requirements Under Part II of the Federal Power Act, 64 FERC ¶ 61,139, clarified and reh'g granted in part and denied in part, 65 FERC ¶ 61,081 (1993), service will be provided under an umbrella tariff and the Electric Power Service Agreement is being filed either prior to or within thirty (30) days of the commencement of service. LILCO has served copies of this filing on the customer which is a party to the Electric Power Service Agreement and on the New York State Public Service Commission.

Comment date: June 16, 1998, in accordance with Standard Paragraph E at the end of this notice.

11. FirstEnergy System

[Docket No. ER98–3117–000]

Take notice that on May 27, 1998, FirstEnergy System filed a Service Agreement to provide Firm Point-to-Point Transmission Service for Wabash Valley Power Association, Incorporated, the Transmission Customer. Services are being provided under the FirstEnergy System Open Access Transmission Tariff submitted for filing by the Federal Energy Regulatory Commission in Docket No. ER97–412–000. The proposed effective date under this Service Agreement is May 1, 1998, for the above mentioned Service Agreement in this filing.

Comment date: June 16, 1998, in accordance with Standard Paragraph E at the end of this notice.

12. Carolina Power & Light Company

[Docket No. ER98–3118–000]

Take notice that on May 27, 1998, Carolina Power & Light Company (Carolina), tendered for filing an executed Service Agreement between Carolina and the following Eligible Entity: Tractebel Energy Marketing, Inc. Service to the Eligible Entity will be in accordance with the terms and conditions of Carolina's Tariff No. 1, for Sales of Capacity and Energy.

Copies of the filing were served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment date: June 16, 1998, in accordance with Standard Paragraph E at the end of this notice.

13. Florida Power & Light Company

[Docket No. ER98–3119–000]

Take notice that on May 27, 1998, Florida Power & Light Company (FPL), filed Service Agreements with Merchant Energy Group of the Americas and PECO Energy Company for service pursuant to Tariff No. 1, for Sales of Power and Energy by Florida Power & Light. In addition, FPL filed Service Agreements with PECO Energy Company and Public Service Electric and Gas Company for service pursuant to FPL's Market Based Rates Tariff. FPL requests that the Service Agreements be made effective on April 28, 1998.

Comment date: June 16, 1998, in accordance with Standard Paragraph E at the end of this notice.

14. Kansas City Power & Light Company

[Docket No. ER98–3120–000]

Take notice that on May 27, 1998, Kansas City Power & Light Company (KCPL), tendered for filing a Service Agreement dated May 13, 1998, between KCPL and Columbia Energy Power Marketing Corporation. KCPL proposes an effective date of May 13, 1998, and requests waiver of the Commission's notice requirement. This Agreement provides for Non-Firm Power Sales Service.

In its filing, KCPL states that the rates included in the above-mentioned Service Agreement are pursuant to KCPL's compliance filing in Docket No. ER94–1045.

Comment date: June 16, 1998, in accordance with Standard Paragraph E at the end of this notice.

15. Kansas City Power & Light Company

[Docket No. ER98–3121–000]

Take notice that on May 27, 1998, Kansas City Power & Light Company (KCPL), tendered for filing a Service Agreement dated May 7, 1998, between KCPL and Madison Gas and Electric Company. KCPL proposes an effective date of May 7, 1998, and requests waiver of the Commission's notice requirement. This Agreement provides for Non-Firm Power Sales Service.

In its filing, KCPL states that the rates included in the above-mentioned Service Agreement are pursuant to KCPL's compliance filing in Docket No. ER94–1045.

Comment date: June 16, 1998, in accordance with Standard Paragraph E at the end of this notice.

16. Houston Lighting & Power Company

[Docket No. ER98–3122–000]

Take notice that on May 27, 1998, Houston Lighting & Power Company (HL&P), tendered for filing an executed transmission service agreement (TSA) with VTEC Energy, Inc. (VTEC), for Non-Firm Transmission Service under HL&P's FERC Electric Tariff, Third Revised Volume No. 1, for Transmission Service To, From and Over Certain HVDC Interconnections. HL&P has requested an effective date of May 27, 1998.

Copies of the filing were served on VTEC and the Public Utility Commission of Texas.

Comment date: June 16, 1998, in accordance with Standard Paragraph E at the end of this notice.

17. Long Island Lighting Company

[Docket No. ER98–3123–000]

Take notice that on May 27, 1998, Long Island Lighting Company (LILCO), filed a Service Agreement for Non-Firm Point-to-Point Transmission Service between LILCO and SCANA Energy Marketing, Inc., (Transmission Customer).

The Service Agreement specifies that the Transmission Customer has agreed to the rates, terms and conditions of LILCO's open access transmission tariff filed on July 9, 1996, in Docket No. OA96–38–000.

LILCO requests waiver of the Commission's sixty (60) day notice requirements and an effective date of May 19, 1998, for the Service

Agreement. LILCO has served copies of the filing on the New York State Public Service Commission and on the Transmission Customer.

Comment date: June 16, 1998, 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 these filings are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–14820 Filed 6–3–98; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–2729–000, et al.]

Carolina Power & Light Company, et al. Electric Rate and Corporate Regulation Filings

May 28, 1998.

Take notice that the following filings have been made with the Commission:

1. Carolina Power & Light Company

[Docket No. ER98–2729–000]

Take notice that on May 22, 1998, Carolina Power & Light Company (CP&L), tendered for filing a notice of withdrawal of its April 29, 1998, filing to revise its Tariff No. 1, for sales of capacity energy by CP&L. Pursuant to Rule 216, CP&L requests that its April 29, 1998, filing be withdrawn.

CP&L states that copies of this filing have served upon North Carolina Utilities Commission, Public Service Commission of South Carolina and All Sales Tariff Customers.

Comment date: June 11, 1998, in accordance with Standard Paragraph E at the end of this notice.

2. Ohio Edison Company and Pennsylvania Power Company

[Docket No. ER98–3098–000]

Take notice that on May 26, 1998, Ohio Edison Company tendered for filing on behalf of itself and Pennsylvania Power Company, a Service Agreement with Tractebel Energy Marketing, Inc., under Ohio Edison's Power Sales Tariff. This filing is made pursuant to Section 205 of the Federal Power Act.

Comment date: June 15, 1998, in accordance with Standard Paragraph E at the end of this notice.

3. Kansas Gas and Electric Company

[Docket No. ER98–3099–000]

Take notice that on May 26, 1998, Kansas Gas and Electric Company (KGE), tendered for filing an amendment to the Electric Interconnection Agreement (the Operating Agreement) between KGE and Western Resources, Inc., (Western Resources). KGE states that the amendment modifies the amount of capacity made available to Western Resources under the Operative Agreement. The change is proposed to become effective June 1, 1998.

Copies of the filing were served upon Western Resources, Inc., and the Kansas Corporation Commission.

Comment date: June 15, 1998, in accordance with Standard Paragraph E at the end of this notice.

4. American Electric Power Service Corporation

[Docket No. ER98–3100–000]

Take notice that on May 26, 1998, the American Electric Power Service Corporation (AEPSC), tendered for filing executed service agreements under the Power Sales Tariff of the AEP Operating Companies (Power Sales Tariff). The Power Sales Tariff was accepted for filing effective October 10, 1995 and has been designated AEP Operating Companies' FERC Electric Tariff First Revised Volume No. 2. AEPSC respectfully requests waiver of notice to permit the service agreements to be made effective for Arkansas Electric Cooperative on January 28, 1998; City of Austin, Texas on March 18, 1998; Enserch Energy Services, Inc., on March 1, 1998; Texas-New Mexico Power Company on March 31, 1998, and Public Service Electric & Gas Company on August 27, 1997.

A copy of the filing was served upon the Parties and the State Utility Regulatory Commissions of Indiana, Kentucky, Michigan, Ohio, Tennessee, Virginia and West Virginia.

Comment date: June 15, 1998, in accordance with Standard Paragraph E at the end of this notice.

5. PP&L, Inc.

[Docket No. ER98–3101–000]

Take Notice that on May 26, 1998, PP&L, Inc. (formerly known as Pennsylvania Power & Light Company) (PP&L), filed a Service Agreement dated May 14, 1998 with Enserch Energy Services, Inc. (Enserch), under PP&L's FERC Electric Tariff, Original Volume No. 5. The Service Agreement adds Enserch as an eligible customer under the Tariff.

PP&L requests an effective date of May 26, 1998, for the Service Agreement.

PP&L states that copies of this filing have been supplied to Enserch and to the Pennsylvania Public Utility Commission.

Comment date: June 15, 1998, in accordance with Standard Paragraph E at the end of this notice.

6. PP&L, Inc.

[Docket No. ER98–3102–000]

Take Notice that on May 26, 1998, PP&L, Inc. (formerly known as Pennsylvania Power & Light Company) (PP&L), filed a Service Agreement dated April 30, 1998, with Public Service Electric and Gas Company (PSE&G) under PP&L's FERC Electric Tariff, Original Volume No. 5. The Service Agreement adds PSE&G as an eligible customer under the Tariff.

PP&L requests an effective date of May 26, 1998, for the Service Agreement.

PP&L states that copies of this filing have been supplied to PSE&G and to the Pennsylvania Public Utility Commission.

Comment date: June 15, 1998, in accordance with Standard Paragraph E at the end of this notice.

7. American Electric Power Service Corporation

[Docket No. ER98–3103–000]

Take notice that on May 26, 1998, the American Electric Power Service Corporation (AEPSC), tendered for filing executed service agreements under the Wholesale Market Tariff of the AEP Operating Companies (Power Sales Tariff). The Power Sales Tariff was accepted for filing effective October 10, 1997 and has been designated AEP Operating Companies' FERC Electric Tariff Original Volume No. 5. AEPSC respectfully requests waiver of notice to permit the service agreements to be made effective for service billed on and after May 1, 1998.

A copy of the filing was served upon the Parties and the State Utility Regulatory Commissions of Indiana, Kentucky, Michigan, Ohio, Tennessee, Virginia and West Virginia.

Comment date: June 15, 1998, in accordance with Standard Paragraph E at the end of this notice.

8. Allegheny Power Service Corporation on behalf of Monongahela Power Co., The Potomac Edison Company, and West Penn Power Company (Allegheny Power)

[Docket No. ER98–3104–000]

Take notice that on May 26, 1998, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power) filed Amendment No. 1 to its a market rate tariff to permit affiliated sales pursuant to the Commission's Regulations. Allegheny Power seeks a June 22, 1998, effective date for Amendment No. 1.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: June 15, 1998, in accordance with Standard Paragraph E at the end of this notice.

9. Williams Energy Services Company

[Docket No. ER98–3106–000]

Take notice that on May 26, 1998, Williams Energy Services Company (WESCO), filed a Report of Change of Facts, Revised Market Power Analyses, and Application for Authority To Sell Ancillary Services at Market Based Rates. WESCO states that effective June 1, 1998, it will become the marketer of the electrical output of three must-run generating stations in southern California owned by AES Alamitos, L.L.C., AES Huntington Beach, L.L.C., and AES Redondo Beach, L.L.C. (AES Companies), to the extent capacity and energy are available after the stations' must-run obligations to the California ISO are met. To the extent considered necessary, WESCO requests waiver of the Commission's prior notice requirements to authorize sales of ancillary services at market-based rates as of June 1, 1998.

WESCO states that in order to expedite review by potentially interested parties, it has served copies of the filing on the Public Utilities Commission of California, the California Independent System Operator, the California Power Exchange, all parties of record in Docket Nos. ER95–305–000 through –015, and all parties in Docket Nos. ER98–2184, –2185, –2186 and ER98–2843, –2844 and –2883, which involve related market-based pricing applications by the AES Companies.

Comment date: June 15, 1998, in accordance with Standard Paragraph E at the end of this notice.

10. Louisville Gas and Electric Company and Kentucky Utilities Company

[Docket No. ER98–3107–000]

Take notice that on May 21, 1998, Louisville Gas and Electric Company (LG&E) and Kentucky Utilities Company (KU) filed with the Federal Energy Regulatory Commission a request for inclusion of their respective Service Agreements under their pre-merger Open Access Transmission Tariffs under their post-merger Joint Open Access Transmission Tariff, which was accepted by the Commission for filing and suspended in Louisville Gas and Electric Company, LG&E Energy Marketing Inc., and Kentucky Utilities Company, Docket Nos. EC98–2–000 et al., 82 FERC ¶ 61,308 (1998). LG&E and KU further request that certain Service Agreements of KU be deemed superseded and that the remaining Service Agreements be redesignated. LG&E and KU have also filed a Notice of Succession in Ownership and Operation in conjunction with the foregoing.

Comment date: June 10, 1998, in accordance with Standard Paragraph E at the end of this notice.

11. Rocky Mountain Natural Gas & Electric LLC

[Docket No. ER98–3108–000]

Take notice that on May 26, 1998, Rocky Mountain Natural Gas & Electric LLC, tendered for filing Waivers, Blanket Approvals, and Order Approving Rate Schedule dated January 21, 1998, for an Electric License. Rocky Mountain Natural Gas & Electric LLC, seeks approval of an initial rate schedule, to be effective 60 days after the date of filing, or the date the Commission issues an order in this proceeding.

In its filing Rocky Mountain Natural Gas & Electric LLC, states that the rates included in the above-mentioned Service Agreement are Rocky Mountain Natural Gas & Electric LLC's rates and requests in the compliance filing to FERC Order No. 888–A.

Comment date: June 15, 1998, in accordance with Standard Paragraph E at the end of this notice.

12. Entergy Services, Inc.

[Docket No. ER98–3109–000]

Take notice that on May 26, 1998, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (collectively, the Entergy Operating Companies), tendered for filing a Short-Term Market Rate Sales Agreement between Entergy Services, as agent for the Entergy Operating Companies, and City of Ruston, Louisiana for the sale of power under Entergy Services' Rate Schedule SP.

Comment date: June 15, 1998, in accordance with Standard Paragraph E at the end of this notice.

13. PJM Interconnection, L.L.C.

[Docket No. ER98–3110–000]

Take notice that on May 26, 1998, PJM Interconnection, L.L.C. (PJM), tendered for filing an amendment to its umbrella agreements for short-term firm point-to-point service.

The amendments provide for a confirmation period during which an applicant for short-term firm point-to-point transmission service must confirm, following PJM's approval of its request for service, that it will commence service in accordance with its request.

PJM requests an effective date of August 1, 1998, for the amendments.

Comment date: June 15, 1998, in accordance with Standard Paragraph E at the end of this notice.

14. Illinois Power Company

[Docket No. ER98–3111–000]

Take notice that on May 26, 1998, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing a Power Sales Tariff, Service Agreement under which Northern/AES Energy, L.L.C., will take service under Illinois Power Company's Power Sales Tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of May 18, 1998.

Comment date: June 15, 1998, in accordance with Standard Paragraph E at the end of this notice.

15. Illinois Power Company

[Docket No. ER98–3112–000]

Take notice that on May 26, 1998, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing firm and non-firm transmission agreements under which Southern Illinois Power

Cooperative will take transmission service pursuant to its open access transmission tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of May 15, 1998.

Comment date: June 15, 1998, in accordance with Standard Paragraph E at the end of this notice.

16. Illinois Power Company

[Docket No. ER98–3113–000]

Take notice that on May 26, 1998, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing firm and non-firm transmission agreements under which PP&L, Inc., will take transmission service pursuant to its open access transmission tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of May 15, 1998.

Comment date: June 15, 1998, in accordance with Standard Paragraph E at the end of this notice.

17. Wisconsin Electric Power Company & Edison Sault Electric Company, Wisconsin Energy Corporation, Inc. and ESELCO, Inc.

[Docket No. ER98–3114–000]

Take notice that on May 26, 1998, Wisconsin Electric Power Company (WEPCO) and Edison Sault Electric Company (Edison Sault) filed a single system tariff (Joint Open Access Transmission Tariff), required to be on file prior to the consummation of the merger approved in Wisconsin Energy Corporation, Inc., and ESELCO, Inc., 83 FERC ¶ 61,069 (1998). The Joint Open Access Transmission Tariff supersedes the WEPCO tariff previously filed in Docket Nos. OA97–578, ER97–3299, and ER98–93, and the Edison Sault tariff previously filed in Docket No. OA97–718.

This compliance filing has been served upon all wholesale customers for both WEPCO and Edison Sault, as well as the Michigan Public Service Commission, the Public Service of Wisconsin, and the parties to Docket No. EC98–8.

Comment date: June 15, 1998, in accordance with Standard Paragraph E at the end of this notice.

18. Statoil Energy Trading Inc.

[Docket No. ER98–3115–000]

Take notice that on May 22, 1998, Eastern Power Distribution, Inc. (EPDI), tendered for filing a correction to the May 21, 1998, notice of name change.

Comment date: June 10, 1998, in accordance with Standard Paragraph E at the end of this notice.

19. Statoil Energy Trading Inc.

[Docket No. ER98–3115–000]

Take notice that on May 22, 1998, Eastern Power Distribution, Inc. (EPDI), tendered for fililng a correction to the May 21, 1998, notice of name change.

Comment date: June 11, 1998, in accordance with Standard Paragraph E at the end of this notice.

20. Statoil Energy Services Inc.

[Docket No. ER98–3116–000]

Take notice that on May 21, 1998, Eastern Energy Marketing, Inc. (EEM), a power marketer licensed by the FERC in Docket No. ER97–4381–000, tendered for filing a notice of company name change to Statoil Energy Services, Inc. (SESI), effective May 20, 1998.

Comment date: June 10, 1998, 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 these filings are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–14819 Filed 6–3–98; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER95–1240–003, et al.]

PacifiCorp, et al.; Electric Rate and Corporate Regulation Filings

May 27, 1998.

Take notice that the following filings have been made with the Commission:

1. PacifiCorp

[Docket No. ER95–1240–003]

Take notice that on May 22, 1998, PacifiCorp, tendered for filing in accordance with 18 CFR 35 of the Commission's Rules and Regulations and the Commission's Order under Docket No. ER95–1240–000, dated April 21, 1998, a refund report.

Copies of this filing were supplied to the Colorado Public Utilities Commission, the Wyoming Public Service Commission, the Arizona Corporation Commission, the California Public Utilities Commission, the Montana Public Service Commission, the Public Utility Commission of Oregon, and the Washington Utilities and Transportation Commission and all affected wholesale customers.

A copy of this filing may be obtained from PacifiCorp's Transmission Function's Bulletin Board System through a personal computer by calling (503) 813–5758 (9600 baud, 8 bits, no parity, 1 stop bit).

Comment date: June 11, 1998, in accordance with Standard Paragraph E at the end of this notice.

2. Public Service Company of New Mexico

[Docket Nos. ER95–1800–004, ER95–1800–002, EL95–55–000, EL95–63–000, EL95–65–000, EL95–75–000, ER96–1462–000, ER96–1462–001, ER96–1551–000, ER96–1551–002, TX96–5–000, TX96–11–000, ER96–3036–000, OA96–202–000]

Take notice that on May 21, 1998, Public Service Company of New Mexico (PNM), submitted for filing a Compliance Report regarding refunds to affected transmission service customers, for transmission service fees collected (by PNM) in excess of PNM's settlement agreement rate approved by the Federal Energy Regulatory Commission in its April 21, 1998, letter order. The affected customers are: Plains Electric Generation and Transmission Cooperative, Inc. (Plains), The Incorporated County of Los Alamos, New Mexico (LAC), The United States Department of Energy Western Area Power Administration (WAPA), The Navajo Tribal Utility Authority (NTUA), and El Paso Electric Company (EPE).

Copies of the filing have been provided to all parties to this proceeding, and the filing is also available for public inspection at PNM's offices in Albuquerque, New Mexico.

Comment date: June 10, 1998, in accordance with Standard Paragraph E at the end of this notice.

3. West Texas Wind Energy Partners, LLC

[Docket No. ER98–1965–001]

Take notice that on May 21, 1998, West Texas Wind Energy Partners, LLC (WTWEP), in compliance with the Commission's order issued April 23, 1998, submitted a Code of Conduct with Respect to the Relationship between WTWEP and its affiliates.

Comment date: June 10, 1998, in accordance with Standard Paragraph E at the end of this notice.

4. Pelican Energy Management, Inc.

[Docket No. ER98–3084–000]

Take notice that on May 22, 1998, Pelican Energy Management, Inc. (Pelican), tendered for filing pursuant to Rule 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 sixty (60) days from the date of its filing.

Pelican intends to engage in electric power and energy transactions as a marketer and a broker. In transactions where Pelican sells electric energy, it proposes to make such sales on rates, terms, and conditions to be mutually agreed to with the purchasing party. Neither Pelican nor any of its affiliates are in the business of generating or transmitting electric power, or are engaged in any form of franchised electricity distribution.

Rate Schedule No. 1, provides for the sale of energy and capacity at agreed prices. Rate Schedule No. 1, also provides that no sales may be made to affiliates.

Comment date: June 11, 1998, in accordance with Standard Paragraph E at the end of this notice.

5. Maine Public Service Company

[Docket No. ER98–3085–000]

Take notice that on May 22, 1998, Maine Public Service Company (Maine Public), filed an executed Service Agreement with SCANA Energy Marketing, Inc.

Comment date: June 11, 1998, in accordance with Standard Paragraph E at the end of this notice.

6. The Dayton Power and Light Company

[Docket No. ER98–3086–000]

Take notice that on May 22, 1998, The Dayton Power and Light Company (Dayton), submitted service agreements establishing Merchant Energy Group of the Americas, Inc., NorAm Energy Services, Inc., as customers under the terms of Dayton's Open Access Transmission Tariff.

Dayton requests an effective date of one day subsequent to this filing for the service agreements. Accordingly, Dayton requests waiver of the Commission's notice requirements.

Copies of this filing were served upon Merchant Energy Group of the Americas, Inc., NorAm Energy Services, Inc., and the Public Utilities Commission of Ohio.

Comment date: June 11, 1998, in accordance with Standard Paragraph E at the end of this notice.

7. The Dayton Power and Light Company

[Docket No. ER98–3087–000]

Take notice that on May 22, 1998, The Dayton Power and Light Company (Dayton), submitted service agreements establishing Merchant Energy Group of the Americas, Inc., NorAm Energy Services, Inc., and SCANA Energy Marketing, Inc., as customers under the terms of Dayton's Open Access Transmission Tariff.

Dayton requests an effective date of one day subsequent to this filing for the service agreements. Accordingly, Dayton requests waiver of the Commission's notice requirements.

Copies of this filing were served upon Merchant Energy Group of the Americas, Inc., NorAm Energy Services, Inc., SCANA Energy Marketing, Inc., and the Public Utilities Commission of Ohio.

Comment date: June 11, 1998, in accordance with Standard Paragraph E at the end of this notice.

8. PacifiCorp

[Docket No. ER98–3088–000]

Take notice that on May 22, 1998, PacifiCorp, tendered for filing in accordance with 18 CFR 35 of the Commission's Rules and Regulations, a Notice of Filing of Mutual Netting/Closeout Agreements between PacifiCorp and Constellation Power Source, Inc., Cook Inlet Energy Supply L.P., Engage Energy US, L.P., Enserch Energy Services, Inc., Nautilus Energy Company, LLC, New Energy Ventures, L.L.C., Public Service Company of New Mexico and Tractebel Energy Marketing, Inc.

Copies of this filing were supplied the Washington Utilities and Transportation Commission and the Public Utility Commission of Oregon.

A copy of this filing may be obtained from PacifiCorp's Regulatory Administration Department's Bulletin Board System through a personal computer by calling (503) 813–5758 (9600 baud, 8 bits, no parity, 1 stop bit).

Comment date: June 11, 1998, in accordance with Standard Paragraph E at the end of this notice.

9. Kansas City Power & Light Company

[Docket No. ER98–3089–000]

Take notice that on May 22, 1998, Kansas City Power & Light Company (KCPL), tendered for filing Amendatory Agreement No. 2, to Municipal Wholesale Firm Power Contract, between KCPL and the City of Pomona, Kansas, dated April 7, 1998, and an associated Service Schedule.

KCPL states that the Amendatory Agreement revises the Agreement pursuant to KCPL's Open Season. KCPL request waiver of the Commission's notice requirements.

Comment date: June 11, 1998, in accordance with Standard Paragraph E at the end of this notice.

10. Consolidated Edison Company of New York, Inc.

[Docket No. ER98–3090–000]

Take notice that on May 22, 1998, Consolidated Edison Company of New York, Inc., on tendered for filing proposed changes to its FERC Electric Service Tariff No. 2, for the wholesale sale of electric energy and capacity at market-based rates (Tariff).

The proposed changes amend Section 8.3 of the Tariff, which is the Liability and Indemnification section.

Comment date: June 11, 1998, in accordance with Standard Paragraph E at the end of this notice.

11. PacifiCorp

[Docket No. ER98–3091–000]

Take notice that on May 22, 1998, PacifiCorp, tendered for filing in accordance with 18 CFR 35 of the Commission's Rules and Regulations, Non-Firm and Short-Term Firm Point-To-Point Transmission Service Agreements with Southern Company Energy Marketing LP (Southern), under PacifiCorp's FERC Electric Tariff, First Revised Volume No. 11.

Copies of this filing were supplied to Southern, the Washington Utilities and Transportation Commission and the Public Utility Commission of Oregon.

A copy of this filing may be obtained from PacifiCorp's Transmission Function's Bulletin Board System through a personal computer by calling (503) 813–5758 (9600 baud, 8 bits, no parity, 1 stop bit).

Comment date: June 11, 1998, in accordance with Standard Paragraph E at the end of this notice.

12. Alliant Service, Inc.

[Docket No. ER98–3092–000]

Take notice that on May 22, 1998, Alliant Services, Inc., tendered for filing an executed Service Agreements for firm and non-firm point-to-point transmission service, establishing Amoco Energy Trading Corporation as a point-to-point Transmission Customer under the terms of the Alliant Services, Inc., transmission tariff.

Alliant Services, Inc., requests an effective date of May 18, 1998, 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: June 11, 1998, in accordance with Standard Paragraph E at the end of this notice.

13. Pennsylvania Power & Light Co.

[Docket No. ER98–3093–000]

Take notice that on May 22, 1998, Pennsylvania Power & Light Company (PP&L), tendered for filing an Interconnection between PP&L and PEI Power Corporation.

Comment date: June 11, 1998, in accordance with Standard Paragraph E at the end of this notice.

14. Entergy Services, Inc.

[Docket No. ER98–3094–000]

Take notice that on May 22, 1998, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (collectively, the Entergy Operating Companies), tendered for filing a Non-Firm Point-To-Point Transmission Service Agreement between Entergy Services, as agent for the Entergy Operating Companies and Cargill-Alliant, LLC.

Comment date: June 11, 1998, in accordance with Standard Paragraph E at the end of this notice.

15. Entergy Services, Inc.

[Docket No. ER98–3095–000]

Take notice that on May 22, 1998, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (collectively, the Entergy Operating Companies), tendered for filing a Firm Point-To-Point Transmission Service Agreement between Entergy Services, as agent for the Entergy Operating Companies, and Cargill-Alliant, LLC.

Comment date: June 11, 1998, in accordance with Standard Paragraph E at the end of this notice.

16. Pepco Services, Inc.

[Docket No. ER98–3096–000]

Take notice that on May 22, 1998, Pepco Services, Inc. (Pepco Services), tendered for filing pursuant to Rules 205 and 207, a petition for waivers and blanket approvals under various regulations of the Commission and for an order accepting its market-based rate schedule to be effective July 1, 1998.

Pepco intends to engage in electric energy and capacity transactions as a marketer and as a broker.

Comment date: June 11, 1998, in accordance with Standard Paragraph E at the end of this notice.

17. Western Resources, Inc.

[Docket No. ER98–3097–000]

Take notice that on May 22, 1998, Western Resources, Inc., (Western Resources), tendered for filing two agreements; one between Western Resources and American Electric Power Service Corp., and the other between Western Resources and Illinois Power. Western Resources states that the purpose of the agreements is to permit these two customers to take service under Western Resources' market-based power sales tariff on file with the Commission.

The agreements are proposed to become effective March 12, 1998.

Copies of the filing were served upon American Electric Power Service Corp., Illinois Power, and the Kansas Corporation Commission.

Comment date: June 11, 1998, 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 these filings are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–14818 Filed 6–3–98; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6107–6]

Proposed Settlement; SO_2 NAAQS Remand

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed settlement; request for public comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act, as amended (''Act''), 42 U.S.C. 7413(g), notification is hereby given of a proposed settlement regarding EPA's timing of its response to the remand of the United States Court of Appeals for the District of Columbia Circuit in *ALA* v. *Browner,* No. 96–1255 (D.C. Cir., *decided,* January 30, 1998). This case involves a challenge to EPA's decision not to revise the National Ambient Air Quality Standard for sulfur dioxide, issued on May 22, 1996. (61 FR 25566, May 22, 1996).

EPA's planned schedule for responding to the court's remand is set forth in a **Federal Register** Notice (63 FR 24782, May 5, 1998) that is included as an attachment to the settlement agreement. As set forth therein, EPA would propose a response to the remand in the summer of 1999 and take final action on the remand by December 2000.

Under the settlement agreement, in return for EPA agreeing to the schedule set forth in the notice, ALA agrees to not file a petition for rehearing or a suggestion for rehearing *en banc* in the above-referenced case and to refrain from bringing any unreasonable delay claims or mandatory duty suits regarding the SO_2 NAAQS prior to January 2001.

For a period of thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the settlement from persons who were not named as parties to the litigation in question. The Agency or the Department of Justice may withhold or withdraw consent to the proposed settlement if the comments disclose facts or circumstance that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Copies of the

settlement, which includes as an attachment the **Federal Register** document outlining EPA's schedule for responding to the remand, are available from Samantha Hooks, Air and Radiation Law Office (2344), Office of General Counsel, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, (202) 260–3804. Written comments should be sent to Michael L. Goo, Air and Radiation Division, Office of General Counsel, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460 and must be submitted on or before July 6, 1998.

Dated: May 30, 1998.

Jonathan Z. Cannon,

General Counsel.

[FR Doc. 98–14849 Filed 6–3–98; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6107–4]

Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990–1996

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of document availability and request for comments.

SUMMARY: The Draft *Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990–1996* is available for public review, and the review period has been extended until July 6, 1998, in order to allow additional time for public comment. Annual U.S. emissions for the period of time from 1990–1996 are summarized and presented by source category and sector. The inventory contains estimates of CO2, CH4, N2O, HFCs, PFCs, and SF6 emissions, as well as estimated emissions of VOCs, NO_X, CO, and HFCs. The approach used to estimate emissions for the greenhouse gases was adapted from the methodologies recommended by the Intergovernmental Panel on Climate Change. The U.S. Greenhouse Gas Inventory is being prepared to provide a basis for the ongoing development of a comprehensive and accurate system to identify and quantify emissions and sinks of greenhouse gases in the U.S. It will serve as part of the U.S. submission to the Secretariat of the Framework Convention on Climate Change and to contribute to the updates to the U.S. Climate Action Report. To ensure your comments are considered for the final version of this document, please submit your comments prior to July 6, 1998. However, comments received after that date will still be welcomed and will be considered for the next edition of this report.

DATES: Comments are requested by May 29, 1998.

ADDRESSES: Send requests for a copy of the document to: Mr. Wiley Barbour, PE, Environmental Protection Agency, Climate Policy and Programs Division (2175), 401 M Street, SW, Washington, DC 20460, Fax: (202) 260–6405.

FOR FURTHER INFORMATION CONTACT: Mr. Wiley Barbour, Environmental Protection Agency, Office of Policy, Climate Policy and Programs Division, (202) 260–6972.

SUPPLEMENTARY INFORMATION: You may view the document referenced above on the US EPA's homepage at *www.epa.gov/globalwarming/inventory*. If you wish to send an email with your comments you may send the email to *barbour.wiley@epamail.epa.gov*.

Dated: May 20, 1998.

David M. Gardiner,

Assistant Administrator.

[FR Doc. 98–14846 Filed 6–3–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6106–9]

Agency Information Collection Activities OMB Responses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notices.

SUMMARY: This document announces the Office of Management and Budget's (OMB) responses to Agency clearance requests, in compliance with the Paperwork Reduction Act (44 U.S.C. 3501 et. Seq.). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

FOR FURTHER INFORMATION CONTACT:

Call Sandy Farmer at (202) 260–2740, or E-mail at ''farmer.sandy@epamail.epa.gov'', and please refer to the appropriate EPA Information Collection Request (ICR) Number.

SUPPLEMENTARY INFORMATION:

OMB Responses to Agency Clearance Requests

OMB Approvals

EPA ICR No. 1361.07; New RCRA Reporting and Recordkeeping Requirements for Boilers and Industrial Furnaces Burning Hazardous Waste; in 40 CFR part 63, subpart EEE and 40 CFR 261.38; was approved 04/24/98; OMB No. 2050–0073; expires 04/30/2001.

EPA ICR No. 1304.05; Application for Preauthorization of a CERCLA Response Action; in 40 CFR part 307; was approved 04/29/98; OMB No. 2050–0106; expires 04/30/2001.

EPA ICR No. 1058.06; NSPS for Municipal Incinerators; in 40 CFR part 60, subpart E; was approved 04/22/98; OMB No. 2060–0040; expires 04/30/2001.

EPA ICR No. 1652.03; NESHAP for Halogenated Solvent Cleaners/Halogenated Hazardous Air Pollutants (HAP); in 40 CFR part 63, subpart T; was approved 05/01/98; OMB No. 2060–0273; expires 05/31/2001.

EPA ICR No. 1676.02; Clean Air Act Tribal Authority; in 40 CFR part 49; was approved 05/19/98; OMB No. 2060–0306; expires 05/31/2001.

OMB Disapprovals

EPA ICR No. 1630.04; Facility Response Plan Rule; was disapproved by OMB 04/17/98.

EPA ICR No. 1641.02; Collection of Economic and Regulatory Impact Support Data under RCRA; was disapproved by OMB 05/05/98.

EPA ICR No. 1442.15; Land Disposal Restrictions, Phase IV Second Supplemental Proposal Treatment Standards for Wastes from Toxicity Characteristic Metals and Mineral Processing; was disapproved by OMB 05/03/98.

EPA ICR No. 0328.06; Spill Prevention Control and Countermeasure Plans; (Proposed Revision) was disapproved by OMB 05/05/98.

EPA ICR No. 1855.01; Promulgation for Federal Implementation Plan for Arizona-Phoenix Moderate Area PM–10 (includes a Proposed Rule for Vacant Lots, Unpaved Parking Lots, and Unpaved Roads for the Phoenix Area; was disapproved by OMB 05/19/98.

Extension of Expiration Date

EPA ICR No. 1637.03; Determining Conformity of General Federal Action to State Implementation Plans; in 40 CFR part 51, subpart W and 40 CFR part 93, subpart B; OMB No. 2060–0279; on 04/09/98 OMB extended the expiration date through 07/31/98.

Dated: May 28, 1998.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 98–14847 Filed 6–3–98; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6107–2]

Carcinogenic Effects of Benzene: An Update

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: This notice announces the availability of a final report titled, Carcinogenic Effects of Benzene: An Update (EPA/600/P–97/001F), which was prepared by the U.S. Environmental Protection Agency's (EPA) National Center for Environmental Assessment (NCEA) of the Office of Research and Development (ORD).

DATES: This document will be available on or about June 15, 1998.

ADDRESSES: The document is available on the Internet at http://www.epa.gov/ncea. A limited number of paper copies will be available from the Center for Environmental Research Information, National Risk Management Research Laboratory, U.S. Environmental Protection Agency, 26 W. Martin Luther King Drive, Cincinnati, OH 45268; telephone: 513–569–7562; fax: 513–569–7566. If you are requesting a paper copy, please provide your name, mailing address, and the document title and number, Carcinogenic Effects of Benzene: An Update (EPA/600/P–97/001F).

FOR FURTHER INFORMATION CONTACT: David Bayliss, National Center for Environmental Assessment/Washington Office (8623D), U.S. Environmental Protection Agency, Washington, D.C. 20460. Telephone: 202–564–3294; fax: 202–565–0078; e-mail: *benzene.new@epa.gov.*

SUPPLEMENTARY INFORMATION: This report was developed at the request of the Office of Mobile Sources, Office of Air and Radiation, to update the current Agency cancer inhalation risk characterization shown on the Integrated Risk Information System (IRIS) and in the 1985 assessment, Interim Quantitative Cancer Unit Risk Estimates Due to Inhalation of Benzene. The major issue addressed in this report involves the magnitude of the risk of cancer to humans exposed to low levels of benzene. Occupational studies of workers exposed to benzene continue to provide the bulk of evidence of benzene's carcinogenicity. Workers are exposed at much higher levels than is the general public. This document reaffirms that benzene is a ''known'' human carcinogen by all routes of exposure. This finding is supported by evidence from epidemiologic studies, animal data, and an improved understanding of mechanism(s) of action. Human epidemiologic studies of highly exposed occupational cohorts have demonstrated that exposure to benzene can cause acute nonlymphocytic leukemia and other blood disorders. Additionally, changes in blood and bone marrow consistent with hematotoxicity are recognized in humans and experimental animals. Currently, there is insufficient evidence to reject a linear dose-response curve for extrapolation of risk to low exposure levels and so use of a linear extrapolation is still recommended. In its earlier assessment, and in IRIS, EPA uses a single risk estimate for benzene of 26 per thousand per ppm of lifetime inhalation exposure. This update assessment recommends a range of risk estimates, that is, 7.1–25 per thousand per ppm.

A draft of this document underwent public comment during July and August 1997 and external peer-panel review on July 16, 1997 (62 FR 35172–35173). These review comments were considered in preparing the final document.

Dated: May 21, 1998.

William H. Farland,

Director, National Center for Environmental Assessment.

[FR Doc. 98–14848 Filed 6–3–98; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License Applicants

Notice if hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, D.C. 20573.

Freight and Export Management Expeditors International, 12818 Skyknoll Lane, Houston, TX 77082, Officers: Angel Ortiz, Partner; Juan Garza, Partner

OverOceans, Inc., 2902 Airfreight Road, Houston, TX 77032, Officers: George J. Smith, CEO; Kahne D. Smith, President

Reto Shipping Corporation d/b/a Reto Services, 8364 N.W. 66 Street, Miami, FL 33166, Officers: Angel Gonzalez, President; Loraine V. Gonzalez, Vice President.

Dated: May 29, 1998.

Joseph C. Polking,

Secretary.

[FR Doc. 98–14769 Filed 6–3–98; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Agency information collection activities: Announcement of Board approval under delegated authority and submission to OMB

SUMMARY

Background

Notice is hereby given of the final approval of a proposed information collection by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.16 (OMB Regulations on Controlling Paperwork Burdens on the Public). Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. A copy of the OMB 83-I and supporting statement and an approved collection of information instrument is placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

FOR FURTHER INFORMATION CONTACT: Chief, Financial Reports Section--Mary M. McLaughlin--Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202-452-3829)

OMB Desk Officer--Alexander T. Hunt--Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503 (202-395-7860)

Final approval under OMB delegated authority the extension for three years, with revision, of the following report:

1. Report title: Annual Report of Bank Holding Companies

Agency form number: FR Y-6

OMB control number: 7100-0124
Frequency: annual
Reporters: bank holding companies
Annual reporting hours: 22,552
Estimated average hours per response: 4.0
Number of respondents: 5,638
Small businesses are affected.

General description of report: This information collection is mandatory (12 U.S.C. 1844(b) and (c)). Confidential treatment is not routinely given to the information in this report. However, confidential treatment for the report information can be requested, in whole or part, in accordance with the instructions to the form.

Abstract: The annual FR Y-6 report provides structure information that includes an organizational chart and information about shareholders that meet certain criteria as well as information on the identity, percentage ownership, and business interests of principal shareholders, directors, and executive officers. The report enables the Federal Reserve to monitor bank holding company operations and to ensure that the operations are conducted in a safe and sound manner and are in compliance with the provisions of the Bank Holding Company Act and Regulation Y (12 C.F.R. 225).

On March 2, 1998, the Board issued for public comment proposed revisions to the FR Y-6 report (63 FR 10224). The comment period expired on May 1, 1998. The Board proposed to revise the reporting requirements of the item providing information on directors and officers (report item 4) to eliminate the reporting of the number of voting securities owned, controlled or held with the power to vote by principal shareholders, officers, directors or other individuals in the bank holding company exercising similar functions. Respondents would still be required to disclose the percentage of each class of voting securities owned, controlled or held with the power to vote by such individuals. Board staff also propose to add lines to the report cover page and the supplemental cover page to disclose holding company physical locations, and to add an appendix to provide an example of an accurately completed FR Y-6 to assist respondents in completing this free-form report.

The Board received comment letters from five consulting firms. Each commenter objected to the proposed revision to eliminate the reporting of the number of voting securities owned, controlled or held with the power to vote by principal shareholders, officers, directors or other individuals in the bank holding companies exercising similar functions. The commenters generally stated that this information provides a measure of an officer or a director's commitment to the safety and soundness of the holding company.

Board staff contacted commenters and discovered that they did not realize that respondents will still be required to disclose the percentage of each class of voting securities owned, controlled or held with the power to vote by such individuals. The commenters indicated that continued collection of this item addresses their concerns. The Board believes that the requirement to only provide the percentage of voting shares held will still provide the Federal Reserve with adequate regulatory information. The Board approved the information collection as initially proposed.

Board of Governors of the Federal Reserve System, May 29, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98–14807 Filed 6–3–98; 8:45 am]

Billing Code 6210–01–P

GENERAL SERVICES ADMINISTRATION

Federal Supply Service; Elimination of Move Management Services Provisions From, and Revisions to the General Transportation Provisions of, the General Services Administration's (GSA's) Centralized Household Goods Traffic Management Program (CHAMP)

AGENCY: Federal Supply Service, GSA.

ACTION: Notice of proposed program changes for comment.

SUMMARY: On December 4, 1997, GSA published for comment in the **Federal Register** (62 FR 64225) a notice of proposed changes to the 1997 Household Goods Tender of Service (HTOS) providing for licensed broker and direct move management services provider participation in CHAMP. After having carefully considered the comments provided and weighed potential ramifications of the new provisions, we have decided not to implement the provisions published on December 4th. Instead, we are eliminating move management services provisions from the HTOS and including under its general transportation provisions those activities currently defined as move management services that are inherent in a carrier's daily operations. The HTOS will be revised accordingly and published for comment in a forthcoming **Federal Register** notice with a planned effective date coinciding with expiration of the current rates on October 31, 1998.

Federal agencies will have the opportunity to obtain broker services through the Governmentwide Employee Relocation Services Schedule. Under this proposed procurement approach, brokers will be restricted to using carriers participating in GSA's HTOS program. To ensure that a carrier which transports a brokered shipment is fairly compensated for its services, we are proposing that carriers have the opportunity to file a brokered shipment rate in addition to the general transportation rate under GSA's next Request For Offers.

DATES: Please submit your comments by August 3, 1998.

ADDRESSES: Mail comments to the Travel and Transportation Management Division (FBX), General Services Administration, Washington, DC 20406, Attn: **Federal Register** Notice. GSA will consider your comments prior to finalizing the revised HTOS provisions.

FOR FURTHER INFORMATION CONTACT: Larry Tucker, Senior Program Expert, Travel and Transportation Management Division, FSS/GSA, 703–305–5745.

Dated: May 29, 1998.

Janice Sandwen,

Director, Travel and Transportation Management Division.

[FR Doc. 98–14845 Filed 6–3–98; 8:45 am]

BILLING CODE 6820–24–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary, Assistant Secretary for Planning and Evaluation, Notice Inviting Applications for the New Award for Fiscal Year 1998, Correction

AGENCY: The Office of the Assistant Secretary for Planning and Evaluation (ASPE), Office of the Secretary (OS).

ACTION: Notice; correction.

SUMMARY: In the **Federal Register** of May 21, 1998, The Office of the Assistant Secretary for Planning and Evaluation (ASPE) published a Notice Inviting Applications for Grants to determine the status of Temporary Assistance for Needy Families (TANF) recipients after they leave the TANF caseload, eligible families who are diverted before being enrolled, or eligible families who fail to enroll. The document contained an ambiguous description of Eligible Applicants.

FOR FURTHER INFORMATION CONTACT: Christopher Snow, 202–690–6888.

Correction

In the **Federal Register** issue of May 21, 1998, in FR Doc. 98–13473, on page 27975, in the first column, correct the first sentence of the ''Eligible Applicants'' section to read:

Given the nature of the research involved, competition is open only to State agencies that administer TANF programs and to counties with populations greater than 500,000 that administer TANF programs.

Dated: May 28, 1998.

Margaret A. Hamburg,

Assistant Secretary for Planning and Evaluation.

[FR Doc. 98–14838 Filed 6–3–98; 8:45 am]

BILLING CODE 4151–04–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request; Proposed Projects

Title: Appeal Procedures for Head Start Grantees and Current or Former Delegate Agencies.

OMB No.: 0980–0242.

Description: Section 646 of the Head Start Act requires the Secretary to prescribe procedures insuring that an agency or organization which desires to serve as a delegate agency under the Head Start Act will receive special notice and an opportunity for a timely appeal when an application has been wholly or substantially rejected or when such application has not been acted upon within a period of time deemed reasonable by the Secretary. The rule also describes the actions available prior to the suspension, termination, or reduction of financial assistance or when an application for refunding is denied.

Respondents: State, Local or Tribal Government.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Appeal	10	1	16	160

Estimated Total Annual Burden Hours: 160.

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: June 1, 1998.

Bob Sargis,

Acting Reports Clearance Officer.

[FR Doc. 98–14836 Filed 6–3–98; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Agency Information Collection Under OMB Review

Title: Head Start Grants Administration.

OMB No.: 0980–0243.

Description: This part establishes regulations applicable to program administration and grant management for grants under the Head Start Act. The regulations clarify definitions of terms applicable to the administration of the Head Start program. In addition the regulations establish a requirement for grantees to have student accidents insurance and bonding for certain officials. The regulations also require funding recipients to establish written personnel policies, and clarify the limitations on costs of development and administration of Head Start programs.

Respondents: State, Local or Tribal Governments.

Title	Number of respondents	Number of responses per respondent	Average burden per response	Burden
45 CFR 1301	2186	1	40	87,440

Estimated Total Annual Burden: 87,440.

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and

Families, Office of Information Services, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: June 1, 1998.

Bob Sargis,

Acting Reports Clearance Officer.

[FR Doc. 98–14837 Filed 6–3–98; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98F–0342]

Alcide Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Alcide Corp. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of acidified sodium chlorite solutions in poultry processing.

DATES: Written comments on the petitioner's environmental assessment by July 6, 1998.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Robert L. Martin, Center for Food Safety and Applied Nutrition (HFS–217), Food and Drug Administration, 200 C St. SW., Washington, DC 20204–0001, 202–418–3074.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5)(21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 8A4591) has been filed by Alcide Corp., 8561 154th Ave., NE., Redmond, WA 98052. The petition proposes to amend the food additive regulations in 21 CFR 173.325 to provide for a lower pH in the use of acidified sodium chlorite solutions in poultry processing.

The potential environmental impact of this action is being reviewed. To encourage public participation consistent with regulations promulgated under the National Environmental Policy Act (40 CFR 1501.4(b)), the agency is placing the environmental assessment submitted with the petition that is the subject of this notice on public display at the Dockets Management Branch (address above) for public review and comment. Interested persons may, on or before July 6, 1998, submit to the Dockets Management Branch (address above) written comments. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. FDA will also place on public display any amendments to, or comments on, the petitioner's environmental assessment without further announcement in the **Federal Register**. If, based on its review, the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: May 14, 1998.

Laura M. Tarantino,

Acting Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 98–14761 Filed 6–3–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Neurological Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

Name of Committee: Neurological Devices Panel of the Medical Devices Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA regulatory issues.

Date and Time: The meeting will be held on June 12, 1998, 10:30 a.m. to 5 p.m.

Location: Corporate Bldg., conference room 020B, 9200 Corporate Blvd., Rockville, MD.

Contact Person: Janet L. Scudiero, Center for Devices and Radiological Health (HFZ–410), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1184, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12513. Please call the Information Line for up-to-date information on this meeting.

Agenda: On June 12, 1998, the committee will discuss and make recommendations on reclassification of preamendment class III artificial embolism devices for neurological use based on information received from a call for safety and effectiveness information, under section 515(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360e), published in the **Federal Register** of August 14, 1995, and June 13, 1997 (60 FR 41984 and 62 FR 32352, respectively).

Procedure: On June 12, 1998, from 11 a.m. to 5 p.m., the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by June 9, 1998. Oral presentations from the public will be scheduled between approximately 11 a.m. and 12 m. and between approximately 3:45 p.m. and 4:15 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before June 9, 1998, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Closed Committee Deliberations: On June 12, 1998, from 10:30 a.m. to 11 a.m., the meeting will be closed to permit FDA to present to the committee

trade secret and/or confidential commercial information (5 U.S.C. 552b(c)(4)) regarding pending issues and applications.

FDA regrets that it was unable to publish this notice 15 days prior to the Neurological Devices Panel of the Medical Devices Advisory Committee meeting. Because the agency believes there is some urgency to bring these issues to public discussion and qualified members of the Neurological Devices Panel of the Medical Devices Advisory Committee were available at this time, the Commissioner concluded that it was in the public interest to hold this meeting even if there was not sufficient time for the customary 15-day public notice.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: May 27, 1998.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 98–14913 Filed 6–2–98; 9:28 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–9152–N]

Medicare and Medicaid Programs; Quarterly Listing of Program Issuances—Third Quarter 1997

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice.

SUMMARY: This notice lists HCFA manual instructions, substantive and interpretive regulations, and other **Federal Register** notices that were published during July, August, and September of 1997 that relate to the Medicare and Medicaid programs. It also identifies certain devices with investigational device exemption numbers approved by the Food and Drug Administration that may be potentially covered under Medicare.

Section 1871(c) of the Social Security Act requires that we publish a list of Medicare issuances in the **Federal Register** at least every 3 months. Although we are not mandated to do so by statute, for the sake of completeness of the listing, we are including all Medicaid issuances and Medicare and Medicaid substantive and interpretive regulations (proposed and final) published during this timeframe.

FOR FURTHER INFORMATION CONTACT:

Bridget Wilhite, (410) 786–5248 (For Medicare instruction information).

Betty Stanton, (410) 786–3247 (For Medicaid instruction information).

Sharon Hippler, (410) 786–4633 (For Food and Drug Administration-approved investigational device exemption information).

Pamela Gulliver, (410) 786–4659 (For all other information).

SUPPLEMENTARY INFORMATION:

I. Program Issuances

The Health Care Financing Administration (HCFA) is responsible for administering the Medicare and Medicaid programs, which pay for health care and related services for 38 million Medicare beneficiaries and 36 million Medicaid recipients. Administration of these programs involves (1) providing information to Medicare beneficiaries and Medicaid recipients, health care providers, and the public, and (2) effective communications with regional offices, State governments, State Medicaid Agencies, State Survey Agencies, various providers of health care, fiscal intermediaries and carriers that process claims and pay bills, and others. To implement the various statutes on which the programs are based, we issue regulations under the authority granted the Secretary under sections 1102, 1871, and 1902 and related provisions of the Social Security Act (the Act) and also issue various manuals, memoranda, and statements necessary to administer the programs efficiently.

Section 1871(c)(1) of the Act requires that we publish in the **Federal Register** at least every 3 months a list of all Medicare manual instructions, interpretive rules, and guidelines of general applicability not issued as regulations. We published our first notice June 9, 1988 (53 FR 21730). Although we are not mandated to do so by statute, for the sake of completeness of the listing of operational and policy statements, we are continuing our practice of including Medicare substantive and interpretive regulations (proposed and final) published during the 3-month time frame. Since the publication of our quarterly listing on June 12, 1992 (57 FR 24797), we decided to add Medicaid issuances to our quarterly listings. Accordingly, we list in this notice Medicaid issuances and Medicaid substantive and interpretive regulations published during July through September 1997.

II. How To Use the Addenda

This notice is organized so that a reader may review the subjects of all manual issuances, memoranda, substantive and interpretive regulations, or Food and Drug Administration-approved investigational device exemptions published during the timeframe to determine whether any are of particular interest. We expect it to be used in concert with previously published notices. Most notably, those unfamiliar with a description of our Medicare manuals may wish to review Table I of our first three notices (53 FR 21730, 53 FR 36891, and 53 FR 50577) and the notice published March 31, 1993 (58 FR 16837), and those desiring information on the Medicare Coverage Issues Manual may wish to review the August 21, 1989 publication (54 FR 34555).

To aid the reader, we have organized and divided this current listing into five addenda. Addendum I lists the publication dates of the most recent quarterly listings of program issuances.

Addendum II identifies previous **Federal Register** documents that contain a description of all previously published HCFA Medicare and Medicaid manuals and memoranda.

Addendum III of this notice lists, for each of our manuals or Program Memoranda, a HCFA transmittal number unique to that instruction and its subject matter. A transmittal may consist of a single instruction or many. Often it is necessary to use information in a transmittal in conjunction with information currently in the manuals.

Addendum IV lists all substantive and interpretive Medicare and Medicaid regulations and general notices published in the **Federal Register** during the quarter covered by this notice. For each item, we list the date published, the **Federal Register** citation, the parts of the Code of Federal Regulations (CFR) that have changed (if applicable), the agency file code number, the title of the regulation, the ending date of the comment period (if applicable), and the effective date (if applicable).

On September 19, 1995, we published a final rule (60 FR 48417) establishing in regulations at 42 CFR 405.201 *et seq.* that certain devices with an investigational device exemption approved by the Food and Drug Administration and certain services related to those devices may be covered under Medicare. It is HCFA's practice to announce in this quarterly notice all investigational device exemption categorizations, using the investigational device exemption numbers the Food and Drug Administration assigns. Addendum V includes listings of the Food and Drug Administration-approved investigational device exemption numbers that have been approved or revised during the quarter covered by

this notice. The listings are organized according to the categories to which the device numbers are assigned (that is, Category A or Category B, and identified by the investigational device exemption number).

III. How To Obtain Listed Material

A. Manuals

An individual or organization interested in routinely receiving any manual and revisions to it may purchase a subscription to that manual. Those wishing to subscribe should contact either the Government Printing Office (GPO) or the National Technical Information Service (NTIS) at the following addresses:

Superintendent of Documents, Government Printing Office, ATTN: New Orders, P.O. Box 371954, Pittsburgh, PA 15250–7954, Telephone (202) 512–1800, Fax number (202) 512–2250 (for credit card orders); or

National Technical Information Service, Department of Commerce, 5825 Port Royal Road, Springfield, VA 22161, Telephone (703) 487–4630.

In addition, individual manual transmittals and Program Memoranda listed in this notice can be purchased from NTIS. Interested parties should identify the transmittal(s) they want. GPO or NTIS can give complete details on how to obtain the publications they sell. Additionally, all manuals are available at the following Internet address: http//www.hcfa.gov/pubforms/progman.htm.

B. Regulations and Notices

Regulations and notices are published in the daily **Federal Register**. Interested individuals may purchase individual copies or subscribe to the **Federal Register** by contacting the GPO at the address given above. When ordering individual copies, it is necessary to cite either the date of publication or the volume number and page number.

The **Federal Register** is also available on 24x microfiche and as an online database through GPO Access. The online database is updated by 6 a.m. each day the **Federal Register** is published. The database includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward. Free public access is available on a Wide Area Information Server (WAIS) through the Internet and via asynchronous dial-in. Internet users can access the database by using the World Wide Web; the Superintendent of Documents home page address is http://www.access.gpo.gov/su__docs/, by using local WAIS client software, or by telnet to swais.access.gpo.gov, then log in as guest (no password required). Dial-in users should use communications software and modem to call (202) 512–1661; type swais, then log in as guest (no password required).

C. Rulings

We publish Rulings on an infrequent basis. Interested individuals can obtain copies from the nearest HCFA Regional Office or review them at the nearest regional depository library. We have, on occasion, published Rulings in the **Federal Register**. In addition, Rulings, beginning with those released in 1995, are available online, through the HCFA Home Page. The Internet address is http://www.hcfa.gov/regs/rulings.htm.

D. HCFA's Compact Disk-Read Only Memory (CD–ROM)

Our laws, regulations, and manuals are also available on CD–ROM, which may be purchased from GPO or NTIS on a subscription or single copy basis. The Superintendent of Documents list ID is HCLRM, and the stock number is 717–139–00000–3. The following material is on the CD–ROM disk:

- Titles XI, XVIII, and XIX of the Act.
- HCFA-related regulations.
- HCFA manuals and monthly revisions.
- HCFA program memoranda.

The titles of the Compilation of the Social Security Laws are current as of January 1, 1995. The remaining portions of CD–ROM are updated on a monthly basis.

Because of complaints about the unreadability of the Appendices (Interpretive Guidelines) in the State Operations Manual (SOM), as of March 1995, we deleted these appendices from CD–ROM. We intend to re-visit this issue in the near future, and, with the aid of newer technology, we may again be able to include the appendices on CD–ROM.

Any cost report forms incorporated in the manuals are included on the CD–ROM disk as LOTUS files. LOTUS software is needed to view the reports once the files have been copied to a personal computer disk.

IV. How To Review Listed Material

Transmittals or Program Memoranda can be reviewed at a local Federal Depository Library (FDL). Under the FDL program, government publications are sent to approximately 1400 designated libraries throughout the United States. Interested parties may examine the documents at any one of the FDLs. Some may have arrangements to transfer material to a local library not designated as an FDL. To locate the nearest FDL, contact any library.

In addition, individuals may contact regional depository libraries, which receive and retain at least one copy of most Federal government publications, either in printed or microfilm form, for use by the general public. These libraries provide reference services and interlibrary loans; however, they are not sales outlets. Individuals may obtain information about the location of the nearest regional depository library from any library. Superintendent of Documents numbers for each HCFA publication are shown in Addendum III, along with the HCFA publication and transmittal numbers. To help FDLs locate the instruction, use the Superintendent of Documents number, plus the HCFA transmittal number. For example, to find the Home Health Agency Manual, (HCFA Pub. 11) transmittal entitled ''Billing for Durable Medical Equipment, Orthotic/Prosthetic Devices,'' use the Superintendent of Documents No. HE 22.8/5 and the HCFA transmittal number 283.

V. General Information

It is possible that an interested party may have a specific information need and not be able to determine from the listed information whether the issuance or regulation would fulfill that need. Consequently, we are providing information contact persons to answer general questions concerning these items. Copies are not available through the contact persons. Copies can be purchased or reviewed as noted above.

Questions concerning Medicare items in Addendum III may be addressed to Bridget Wilhite, Office of Communications and Operations Support, Division of Regulations and Issuances, Health Care Financing Administration, Telephone (410) 786–5248.

Questions concerning Medicaid items in Addendum III may be addressed to Betty Stanton, Center for Medicaid State Operations, Policy Coordination and Planning Group, Health Care Financing Administration, C4–25–02, 7500 Security Boulevard, Baltimore, MD 21244–1850, Telephone (410) 786–3247.

Questions concerning Food and Drug Administration-approved investigational device exemptions may be addressed to Sharon Hippler, Office of Clinical Standards and Quality, Coverage Analysis Group, Health Care Financing Administration, C4–11–04, 7500 Security Boulevard, Baltimore, MD 21244–1850, Telephone (410) 786–4633.

Questions concerning all other information may be addressed to Pamela Gulliver, Office of Communications and

Operations Support, Division of Regulations and Issuances, Health Care Financing Administration, C5–09–26, 7500 Security Boulevard, Baltimore, MD 21244–1850, Telephone (410) 786–4659.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance, Program No. 93.774, Medicare—Supplementary Medical Insurance Program, and Program No. 93.714, Medical Assistance Program)

Dated: May 5, 1998.

Pamela J. Gentry,

Director, Office of Communications and Operations Support.

Addendum I

This addendum lists the publication dates of the most recent quarterly listings of program issuances.

December 18, 1996 (61 FR 66676)

April 21, 1997 (62 FR 19328)

May 12, 1997 (62 FR 25957)

November 3, 1997 (62 FR 59358)

November 21, 1997 (62 FR 62325)

Addendum II—Description of Manuals, Memoranda, and HCFA Rulings

An extensive descriptive listing of Medicare manuals and memoranda was published on June 9, 1988, at 53 FR 21730 and supplemented on September 22, 1988, at 53 FR 36891 and December 16, 1988, at 53 FR 50577. Also, a complete description of the Medicare Coverage Issues Manual was published on August 21, 1989, at 54 FR 34555. A brief description of the various Medicaid manuals and memoranda that we maintain was published on October 16, 1992, at 57 FR 47468.

Addendum III—Medicare and Medicaid Manual Instructions July 1997 Through September 1997

Trans.	Manual/Subject/Publication No,
	Intermediary Manual **Part 1—Fiscal Administration** **(HCFA Pub. 13–1)** **(Superintendent of Documents No. HE 22.8/6–3)**
128	• Coordination of Medicare and Complementary Insurance Programs. Coordination of Medicare With the Federal Grants in Aid Program (Medicaid).
	Intermediary Manual **Part 3—Claims Process** **(HCFA Pub. 13–3)** **(Superintendent of Documents No. HE 22.8/6)**
1715	• Self-Administered Drug Administered In An Emergency Situation.
1716	• Mammography Screening.
1717	• HCPCS for Hospital Outpatient Radiology Services and Other Diagnostic Procedures.
1718	• Billing for Durable Medical Equipment, Orthotic/Prosthetic Devices and Surgical Dressings.
1719	• CFA Common Procedure Coding System.
1720	• Completing Quarterly Report on Provider Enrollment.
1721	• Laboratory Tests for Hemodialysis, Intermittent Peritoneal Dialysis, Continuous Cycling Peritoneal Dialysis and Hemofiltration. Laboratory Tests.
1722	• HCPCS Codes for Diagnostic Services and Medical Services (Correction to Transmittal Number 1719, dated July 1997).
1723	• Claims Processing Timeliness.
1724	• HCPCS Codes for Diagnostic Services and Medical Services—Correction to Transmittal Number 1722, Dated August 1997.
1725	• Mammography Screening. Focused Medical Review. Focused Medical Review Activity Report.
1726	• Review of Form HCFA–1450 for Inpatient and Outpatient Bills. Provider Electronic Billing File and Record Formats. Alphabetic Listing of Data Elements.
	Intermediary Manual. **Part 4—Audit Procedures** **(HCFA Pub. 13–4)** **(Superintendent of Documents No. HE 22.8/6–4)**
33	• Home Office Uniform Desk Review.
	Carriers Manual **Part 1—Fiscal Administration (HCFA Pub. 14–1)** **(Superintendent of Documents No. HE 22.8/7–2)**
122	• Coordination of Medicare and Complementary Insurance Programs. • Coordination of Medicare With the Federal Grants in Aid Program (Medicaid).
	Carriers Manual **Part 2—Claims Process (HCFA Pub. 14–2)** **(Superintendent of Documents No. HE 22.8/7–3)**
136	• Functional Standards for Claims Processing Operations.

Trans.	Manual/Subject/Publication No,
	Carriers Manual **Part 3—Claims Process** **(HCFA Pub. 14–3)** **(Superintendent of Documents No. HE 22.8/7)**
1573	• Evidence of Medical Necessity for Durable Medical Equipment.
	General Claims Processing Requirements.
	Billing Requirements.
	Simplified Roster Bills.
	Health Insurance Maintenance Organization Processing Requirements.
	Speciality Code/Place of Service Processing Requirements.
	Suppression of EOMBs.
	Billing Requirements for Global Surgeries.
	Claims Review for Global Surgeries.
	Payment for Return Trips to the Operating Room for Treatment of Complications.
	EOMB and Remittance Messages.
	Payment for Eyeglasses, Contact Lenses, and Related Services.
	Interpretation of Diagnostic Tests.
1574	• Identifying a Screening Mammography Claim.
1575	• Claims Processing Terminology.
	Handling Incomplete or Invalid Claims.
	Conditional Data Element Requirements.
	Data Element Requirements Matrix.
	Data Element Requirements.
	Incomplete or Invalid Claims.
1576	• Exception to § 7560 A and B When Physician, Other Practitioner, or Supplier Is Excluded From Participation in Medicare Program.
	Authority to Exclude Practitioners, Providers, and Suppliers of Services.
1577	• Evidence of Medicaid Necessity for Durable Medical Equipment (Correction to Transmittal Number 1573, dated July 1997).
1578	• Assistant at Surgery Services.
	Purchased Diagnostic Tests.
	Inpatient Dialysis On Same Date As Evaluation and Management.
	Consultations.
	Threshold Times For Codes 99354 and 99355.
1579	• Services Eligible for HPSA Bonus Payments.
	Remittance Messages.
1580	• Doctor of Medicine and Osteopathy.
	Carriers Manual **Part 4—Professional Relations** **(HCFA Pub. 14–4)** **(Superintendent of Documents No. HE 22.8/7–4)**
14	• Patient and Insured Information.
	Provider of Service or Supplier Information.
	Place of Service Codes and Definitions.
	Program Memorandum **Intermediaries (HCFA Pub. 60A)** **(Superintendent of Documents No. HE 22.8/6–5)**
A–97–5	• Application of Medicare Reasonable Cost Reimbursement Principles to Rural Health Clinics.
A–97–6	• Extension of Due Date for Filing Form HCFA–2540–96 and Form HCFA–1728–94 Cost Reports.
A–97–7	• Home Health Agency Requests to Intermediaries to Change Cost Center Allocation Sequence or Statistical Allocation Basis.
A–97–8	• Instructions to Implement the New Medicare Summary Notice.
A–97–9	• Hospital Outpatient Procedures: Medicare Changes Due to 1997 HCPCS Update—New Dermatology Codes (Clarification).
A–97–10	• Change in Hospice Payment Rates.
A–97–11	• Hospice Provisions Enacted by the Balanced Budget Act of 1997.
A–97–12	• Medicare Home Health Benefit—The Balanced Budget Act of 1997 Clarification of Part-Time or Intermittent Skilled Nursing Care.
A–97–13	• FY 1998 Prospective Payment System, TEFRA Hospital and Other Bill Processing Changes.
A–97–14	• Hospital Outpatient Procedures: Billing for Contrast Material (Clarification).
	Program Memorandum **Carriers** **(HCFA Pub. 60B)** **(Superintendent of Documents No. HE 22.8/6–5)**
B–97–2	• Changes to Correct Coding Edits, Version 4.0.
B–97–3	• Instructions for CLIA Compliance for Part B Laboratory Claims Submitted to Carriers.
B–97–4	• Instructions for CLIA Compliance for Part B Laboratory Claims Submitted to Carriers— Correction to Transmittal Number B–97–3, dated September 1997.
B–97–5	• Update of Rates and Wage Index for Ambulatory Surgical Center Payments Effective October 1, 1997.

Trans.	Manual/Subject/Publication No,
	Program Memorandum Intermediaries/Carriers (HCFA Pub. 60A/B) (Superintendent of Documents No. HE 22.8/6–5)
AB–97–10	• Claims for Separately Billable End Stage Renal Disease Laboratory Services Performed by Certified Independent Dialysis Facilities.
AB–97–11	• Counting of Non-Medicare Home Health Visits and the Reporting of the Associated Costs in Determining the Average Cost Per Visit for Home Health Services.
AB–97–12	• New Implementation Date for Hematocrit Levels for Erythropoietin.
AB–97–13	• Extension of the Limitation on Payment for Services to Individuals Entitled to Benefits on the Basis of End Stage Renal Disease Who are Covered by Group Health Plans.
AB–97–14	• Extension of the Limitation on Payment for Services to Individuals Entitled to Benefits on the Basis of End Stage Renal Disease Who are Covered by Group Health Plans (GHP)— Correction to Program Memorandum Number AB–97–13, dated September 1997.
AB–97–15	• Update to the Hospice Wage Index.
AB–97–16	• Balanced Budget Act of 1997, P.L. 105–33 (H.R. 2015)—Home Health Payment Provisions.
AB–97–17	• New Panels Approved by Common Procedural Terminology—Clarification of Program Memorandum AB–97–5.
AB–97–18	• Balanced Budget Act of 1997, P.L. 105–33 (H.R.)-Home Health Payment Provisions.
	State Operations Manual Provider Certification (HCFA Pub. 7) (Superintendent of Documents No. HE 22.8/12)
283	• Interpretive Guidelines and Survey Procedures.
	Peer Review Organization Manual (HCFA Pub. 19) (Superintendent of Documents No. HE 22.8/8–15)
64	• Opportunity to Discuss. Authority. Scope of Review. Complaints That Do Not Meet Statutory Requirements. Referrals. Review Process.
	Hospital Manual (HCFA Pub. 10) (Superintendent of Documents No. HE 22.8/2)
716	• Self-Administered Drug Administered In An Emergency Situation.
717	• Billing for Mammography Screening.
718	• HCPCS for Hospital Outpatient Radiology Services and Other Diagnostic Procedures.
719	• Billing for Durable Medical Equipment, Orthotic/Prosthetic Devices, and Surgical Dressings.
720	• HCFA Common Procedure Coding System.
721	• HCPCS Codes for Diagnostic Services and Medical Services.
722	• Billing for Mammography Screening.
	Home Health Agency Manual (HCFA Pub. 11) (Superintendent of Documents No. HE 22.8/5)
283	• Billing for Durable Medical Equipment, Orthotic/Prosthetic Devices.
	Skilled Nursing Facility Manual (HCFA Pub. 12) (Superintendent of Documents No. HE 22.8/3)
348	• Billing for Mammography Screening.
349	• Billing for Durable Medical Equipment (DME), Orthotic/Prosthetic Devices, and Surgical Dressings.
350	• Billing for Mammography Screening.
	Outpatient Physical Therapy and Comprehensive Outpatient Rehabilitation Facility Manual (HCFA Pub. 9) (Superintendent of Documents No. HE 22.8/9)
130	• Billing for Durable Medical Equipment Orthotic/Prosthetic Devices, and Surgical Dressings.
	Coverage Issues Manual (HCFA Pub. 6) (Superintendent of Documents No. HE 22.8/18)
102	• Hyperbaric Oxygen Therapy

Trans.	Manual/Subject/Publication No,
	Lung Volume Reduction Surgery (Reduction Pneumoplasty, Also Called Lung Shaving or Lung Contouring) Unilateral or Bilateral by Open or Thoracoscopic Approach for Treatment of Emphysema or Chronic Obstructive Pulmonary Disease.
	Provider Reimbursement Manual—Part 1 **(HCFA Pub. 15–1)** **(Superintendent of Documents No. 22.8/4)**
400	• Provider Requests Regarding Applicability of Cost Limits. Request for Exemption From Skilled Nursing Facility Cost Limits.
	Provider Reimbursement Manual—Part I **Chapter 27—Reimbursement for ESRD and Transplant Services** **(HCFA Pub. 15–1–27)** **(Superintendent of Documents No. 22.8/4)**
29	• Allowable Compensation for Physician Owners and Medical Directors Allowable Compensation for Owners, Administrators, and Assistant Administrators. Submission of Documentation.
	Provider Reimbursement Manual—Part II **Provider Cost Reporting Forms and Instructions** **(HCFA Pub. 15–II–A)** **(Superintendent of Documents No. 22.8/4)**
19	• Electronic Submission of Cost Reports. Electronic Submission of Hospital Cost Reports. Electronic Submission of SNF and HHA Cost Reports.
	Provider Reimbursement Manual—Part II **Provider Cost Reporting Forms and Instructions** **(HCFA Pub. 15–II–A)** **(Superintendent of Documents No. 22.8/4)**
3	• Hospital and Hospital Health Care Complex Cost Report, Form HCFA–2552–96.
	State Medicaid Manual—Part 2 **State Organization and General Administration** **(HCFA Pub. 45–2)** **(Superintendent of Documents No. HE22.8/10)**
89	• Statistical Report on Medical Care: Eligibles, Recipients, Payments, and Services (Form HCFA–2082). Requirements for State Participation in the Medicaid Statistical Information System.
	State Medicaid Manual—Part 3 **Eligibility** **(HCFA Pub. 45–3)** **(Superintendent of Documents No. HE22.8/10)**
68	• Retroactive Medicaid Coverage.
	State Medicaid Manual—Part 6 **Payment for Services** **(HCFA Pub. 45–6)** **(Superintendent of Documents No. HE22.8/10)**
34	• Ingredient Prices Used by States to Establish Upper Limits for Prescription Drugs.
	Rural Health Clinic Manual and Federally **Qualified Health Centers Manual** **(HCFA Pub. 27)** **(Superintendent of Documents No. HE22.8/19:985)**
27 ..... 28	• Billing for Mammography Screening by Rural Health Clinics and Federally Qualified Health Centers. • Billing for Mammography Screening by Rural Health Clinics and Federally Qualified Health Centers.
	Program Memorandum **State Survey Agencies** **(HCFA Pub. 65)**
97–1	• Policy Clarification: Home Health Agency Parent, Branch, and Subunit Criteria.
	Medicare/Medicaid **Sanction—Reinstatement Report** **(HCFA Pub. 69)**
97–7	• Report of Physicians/Practitioners, Providers and/or Other Health Care Suppliers Excluded/Reinstated—May 1997.

Trans.	Manual/Subject/Publication No,
97–8	• Report of Physicians/Practitioners, Providers and/or Other Health Care Suppliers Excluded/Reinstated—June 1997.
97–9	• Report of Physicians/Practitioners, Providers and/or Other Health Care Suppliers Excluded/Reinstated—July 1997.
97–10	• Report of Physicians/Practitioners, Providers and/or Other Health Care Suppliers Excluded/Reinstated—August 1997.

ADDENDUM IV.—REGULATION DOCUMENTS PUBLISHED IN THE FEDERAL REGISTER

Publication date	FR Vol. 62, page	CFR part(s)	File code*	Regulation title	End of comment period	Effective date
07/01/97	35513–35516		HSQ–243–N	Medicare, Medicaid, and CLIA Programs; Clinical Laboratory Improvement Amendments of 1988 Continuance of Exemption of Laboratories Licensed by the State of Washington.		07/01/97
07/01/97	35608–35634		BPD–889–NC	Medicare Program; Schedule of Limits on Home Health Agency Costs Per Visit for Cost Reporting Periods Beginning on or After July 1, 1997.	09/02/97	07/01/97
07/02/97	35824–35826		HSQ–207–NC	Medicare Program; Description of the Health Care Financing Administration's Evaluation Methodology for the Peer Review Organization 5th Scope of Work Contracts.	09/02/97	07/02/97
07/16/97	38100–38107		BPD–845–PN	Medicare Program; Special Payment Limits for Home Oxygen.	09/15/97	07/16/97
07/17/97	38314–38315		ORD–101–N	New and Pending Demonstration Project Proposals Submitted Pursuant to Section 1115(a) of the Social Security Act: May 1997.		07/17/97
07/29/97	40568		BPD–889–NC	Medicare Program; Schedule of Limits on Home Health Agency Costs Per Visit for Cost Reporting Periods Beginning on or After July 1, 1997; CORRECTION.		07/01/97
08/08/97	42860–42883	418	BPD–820–F	Medicare Program; Hospice Wage Index		10/01/97
08/14/97	43541–43542		ORD–102–N	New and Pending Demonstration Project Proposals Submitted Pursuant to Section 1115(a) of the Social Security Act: June 1997.		08/14/97
08/15/97	43657–43674	412 413 414	BPD–763–F	Medicare Program; End-Stage Renal Disease (ESRD) Payment Exception Requests and Organ Procurement Costs.		08/15/97
08/18/97	43962–43963	400 405 410 414	BPD–884–CN	Medicare Program; Revisions to Payment Policies Under the Physician Fee Schedule, Other Part B Payment Policies, and Establishment of the Clinical Psychologist Fee Schedule for Calendar Year 1998; CORRECTION.		
08/18/97	43931–43937	431 442 488 489 498	HSQ–139–F	Medicare and Medicaid Programs; Effective Dates of Provider Agreements and Supplier Approvals.		09/17/97
08/20/97	44221	488	HSQ–156–CN	Medicare and Medicaid Programs; Survey, Certification and Enforcement of Skilled Nursing Facilities and Nursing Facilities.		07/01/95
08/29/97	45815–45821		HSQ–219–GNC	CLIA Program; Fee Schedule Revision	10/28/97	01/01/98
08/29/97	45823		OPL–016–N	Medicare Program; September 22, 1997, Meeting of the Practicing Physician Ad visory Council.		
08/29/97	45966–46140	400 409 410 411 412 413 424 440 485 488 489 498	BPD–878–FC	Medicare Program; Changes to the Hospital Inpatient Prospective Payment Systems and Fiscal Year 1998 Rates.	10/28/97	10/01/97
09/04/97	46698–46707	416	BPD–831–P	Medicare Program; Adjustment in Payment Amounts for New Technology Intraocular Lenses.	11/03/97	09/04/97
09/08/97	47237	416	BPD–878–FC	Medicare Program; Changes to the Hospital Inpatient Prospective Payment Systems and Fiscal Year 1998 Rates; CORRECTION.		
09/11/97	47896–47903	440	MB–071–F	Medicaid Program; Coverage of Personal Care Services.		11/10/97
09/12/97	48098–48105		MB–115–N	State Children's Health Insurance Program; Reserved Allotments to States for Fiscal Year 1998; Enhanced Federal Medical Assistance Percentages.		
09/15/97	48292–48297		MB–110–N	Medicaid Program; Final Limitations on Aggregate Payments to Disproportionate Share Hospitals: Federal Fiscal Year 1997.		

ADDENDUM IV.—REGULATION DOCUMENTS PUBLISHED IN THE FEDERAL REGISTER—Continued

Publication date	FR Vol. 62, page	CFR part(s)	File code*	Regulation title	End of comment period	Effective date
09/17/97	48872–48873	.....	BPD–898–NC ...	Medicare and Medicaid Programs; Announcement of Additional Applications From Hospitals Requesting Waivers for Organ Procurement Service Area.	11/17/97	.....
09/18/97	49049	400 409 410 411 412 413 424 440 485 488 489 498	BPD–878–FC ...	Medicare Program; Changes to the Hospital Inpatient Prospective Payment Systems and Fiscal Year 1998 Rates; CORRECTION.	.....	.....
09/23/97	49649–49654	.....	OMC–029–N	Medicare Program; Solvency Standards for Provider-Sponsored Organizations; Intent To Form Negotiated Rulemaking Committee.	10/08/97	.....
09/23/97	49726	440	MB–071–F	Medicaid Program; Coverage of Personal Care Services; CORRECTION.	.....	.....
09/24/97	49937–49938	473	BPD–453–CN ...	Medicare Program; Medicare Appeals of Individual Claims; CORRECTION.	.....	06/11/97

Categorization of Food and Drug Administration-Approved Investigational Device Exemptions

Under the Food, Drug, and Cosmetic Act (21 U.S.C. 360c), devices fall into one of three classes. Also, under the new categorization process to assist HCFA, the Food and Drug Administration assigns each device with a Food and Drug Administration-approved investigational device exemption to one of two categories. To obtain more information about the classes or categories, please refer to the **Federal Register** notice published on April 21, 1997 (62 FR 19328).

The following information presents the device number, category (in this case, A), and criterion code.

G960082 A1
G970008 A4
G970044 A2
G970058 A2
G970069 A2
G970073 A2
G970088 A2
G970118 A2
G970121 A2
G970128 A1
G970131 A1
G970136 A2
G970147 A1
G970151 A2
G970169 A2
G970176 A2

The following information presents the device number, category (in this case, B), and criterion code.

G910187 B1
G960161 B4
G970014 B2
G970015 B4
G970024 B4
G970045 B4
G970081 B4
G970094 B3
G970096 B1
G970112 B2
G970116 B1
G970117 B4
G970122 B4
G970123 B4
G970129 B2
G970132 B3
G970133 B3
G970134 B4
G970135 B4
G970137 B4
G970138 B4
G970140 B1
G970141 B2
G970142 B1
G970149 B3
G970150 B1
G970157 B4
G970161 B4
G970168 B1
G970178 B2
G970179 B2
G970180 B4
G970183 B1
G970189 B4
G970191 B1
G970193 B2
G970194 B2

[FR Doc. 98–14834 Filed 6–3–98; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; 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:

Name of Committee: National Human Genome Research Institute Initial Review Group, Ethical, Legal, and Social Implications Subcommittee.
Agenda/Purpose: To review and evaluate grant applications and/or contract proposals.
Date: June 4, 1998.
Time: 9:00 am–5:00 pm.
Place: Holiday Inn Hotel, Bethesda, Maryland.
This notice is being published less than fifteen days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

Name of Committee: National Human Genome Research Institute, Special Emphasis Panel 01.
Agenda/Purpose: To review and evaluate grant applications and/or contract proposals.
Date: June 30, 1998.
Time: 8:30–12 Noon.
Place: Holiday Inn Hotel, Bethesda, Maryland.

Name of Committee: National Human Genome Research Institute Initial Review Group, Genome Research Review Subcommittee.
Agenda/Purpose: To review and evaluate grant applications and/or contract proposals.
Date: June 20, 1998.
Time: 1:00–5:00 pm.
Place: Holiday Inn Hotel, Bethesda, Maryland.

Name of Committee: National Human Genome Research Institute, Special Emphasis Panel 02.
Agenda/Purpose: To review and evaluate grant applications and/or contract proposals.
Date: June 30, 1998.
Time: 8:30 am–5:00 pm.
Place: Holiday Inn Hotel, Bethesda, Maryland.

Name of Committee: National Human Genome Research Institute, Special Emphasis Panel 03.
Agenda/Purpose: To review and evaluate grant applications and/or contract proposals.
Date: July 1–2, 1998.
Time: 8:30 am–5:00 pm.
Place: Holiday Inn Hotel, Bethesda, Maryland.

Contact Person: Rudy Pozzatti, Ph.D., Office of Scientific Review, National Human Genome Research Institute, National Institutes of Health, Building 38A, Room 604, Bethesda, Maryland 20892, (301) 402–0838.

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. The applications and/or contract proposals, and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalogue of Federal Domestic Assistance Program No. 93.172, Human Genome Research)

Dated: May 27, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–14765 Filed 6–3–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious 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 Allergy and Infectious Diseases Special Emphasis Panel (SEP) meeting:

Name of SEP: Unnate Immunity in Vertebrates and Insects and Innate Immune Response to Microbial Infections.

Date: June 26, 1998.

Time: 8:30 a.m. to Adjournment.

Place: Bethesda Ramada Hotel and Conference Center, Parlor Room, 8400 Wisconsin Avenue, Bethesda, MD 20814, (301) 496–2550.

Contact Person: Dr. Vassil Georgiev, Scientific Review Admin., 6003 Executive Boulevard, Solar Bldg., Room 4C04, Bethesda, MD 20892, (301) 496–8206.

Purpose/Agenda: To evaluate grant applications.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/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 Programs Nos. 93.855, Immunology, Allergic and Immunologic Diseases Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health)

Dated: May 27, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–14762 Filed 6–3–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases;

Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Allergy and Infectious Diseases Special Emphasis Panel (SEP) meetings:

Name of SEP: Innovative Grant Program for Approaches in HIV Vaccine Research.

Date: June 15–16, 1998.

Time: 8 a.m. to Adjournment.

Place: Gaithersburg Hilton Hotel, Gaithersburg-Darnestown Room, 620 Perry Parkway, Gaithersburg, MD 20877, (301) 977–8900.

Contact Person: Dr. Kevin Ryan, Scientific Review Adm., 6003 Executive Boulevard, Solar Bldg., Room 4C12, Bethesda, MD 20892, (301) 496–2550.

Purpose/Agenda: To evaluate grant applications.

Name of SEP: Immunopathogenesis of Type 1 Diabetes Mellitus.

Date: July 6–8, 1998.

Time: 8 a.m. to Adjournment.

Place: Bethesda Ramada Hotel, Ambassador I, 8400 Wisconsin Avenue, Bethesda, MD 20814, (301) 654–1000.

Contact Person: Dr. Priti Mehrotra, Scientific Review Adm., 6003 Executive Boulevard, Solar Bldg., Room 4C14, Bethesda, MD 20892, (301) 496–2550.

Purpose/Agenda: To evaluate grant applications.

These 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 Programs Nos. 93.855, Immunology, Allergic and Immunologic Diseases Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health)

Dated: May 27, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, National Institutes of Health.

[FR Doc. 98–14763 Filed 6–3–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; 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 of the National Institute of Mental Health Special Emphasis Panel:

Agenda/Purpose: To review and evaluate grant applications.

Committee Name: National Institute of Mental Health Special Emphasis Panel.

Date: July 2, 1998.

Time: 1:30 p.m.

Place: Parklawn, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857.

Contact Person: W. Gregory Zimmerman, Parklawn, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857; Telephone: 301 443–1340.

Committee Name: National Institute of Mental Health Special Emphasis Panel.

Date: July 2, 1998.

Time: 11 a.m.

Place: Parklawn, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857.

Contact Person: W. Gregory Zimmerman, Parklawn, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857; Telephone: 301 443–1340.

Committee Name: National Institute of Mental Health Special Emphasis Panel.

Date: July 8, 1998.

Time: 1:30 p.m.

Place: Parklawn, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857.

Contact Person: W. Gregory Zimmerman, Parklawn, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857; Telephone: 301 443–1340.

Committee Name: National Institute of Mental Health Special Emphasis Panel.

Date: July 23, 1998.

Time: 8:30 a.m.

Place: Chevy Chase Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: W. Gregory Zimmerman, Parklawn, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857; Telephone: 301 443–1340.

The meeting 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 Numbers 93.242, 93.281, 93.282)

Dated: May 27, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, National Institutes of Health.

[FR Doc. 98–14764 Filed 6–3–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

Proposed Project

Evaluation of Treatment Improvement Protocol (TIP) No. 24—New—Since 1992, the Center for Substance Abuse Treatment (CSAT) has published 26 Treatment Improvement Protocols (TIPs), which provide administrative and clinical practice guidance to the substance abuse treatment field. Up to six special studies will be conducted to evaluate the impact of TIPs. The first of these will evaluate the dissemination and impact of TIP No. 24—Guide to Substance Abuse Services for Primary Care Clinicians—on the clinical practices of primary care physicians and related health professionals. The information contained in the document has been published in three alternative lengths and formats: the complete TIP, a Concise Desk Reference, and a Pocket Reference Guide.

This study will examine the dissemination methods used by CSAT; the success of those methods in reaching the target audiences; users' perceptions of the value of the alternative versions; decisions to implement the guidance presented in TIPs; and the successes, correlates, and barriers associated with implementation. The study will use a one-group posttest-only design and will survey five distinct target audiences of interest to CSAT: (1) the key administrative staff, regional representatives, and Board members of primary care associations, physician groups, and primary health care provider associations; (2) members of the American Academy of Family Physicians; (3) the American Society of Internal Medicine; (4) the American Academy of Physician Assistants; and (5) the American Nurses Association. Measures will include employment characteristics and outcomes associated with the following variables: TIP version received; awareness, receipt, and reading of the TIP; perceived utility of the TIP; and the impact of the TIP on changing clinical practices. The estimated annualized burden for a 1-year data collection period is summarized below.

	Number of respondents	Number of responses/respondent	Hours/response	Total burden hours
Opinion/leadership group	550	1	.1	55
AAFP	2100	1	.1	210
ASIM	2100	1	.1	210
APA	1650	1	.1	165
ANA	1650	1	.1	165
Total				805

Send comments to Nancy Pearce, SAMHSA Reports Clearance Officer, Room 16–105, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: May 29, 1998.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 98–14802 Filed 6–3–98; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4374–N–01]

Manufactured Housing Construction and Safety Standards: Selection of Members of the Manufactured Home Advisory Council

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice of selection of Advisory Council Members.

SUMMARY: Section 605(a) of the Act provides that the Secretary appoint a National Manufactured Home Advisory Council comprised of eight members selected from consumer organizations, community organizations and recognized community leaders; eight members from the Manufactured Home industry and related groups including at least one representative of small business; and eight members from government agencies including Federal, State and local governments. Section 605(b) provides that the Secretary shall, to the extent feasible, consult with the Advisory Council prior to establishing, amending, or revoking any Manufactured Home construction or safety standard. This Notice announces the appointment of members to the National Manufactured Home Advisory Council.

FOR FURTHER INFORMATION CONTACT: David R. Williamson, Director, Office of Consumer and Regulatory Affairs, Department of Housing and Urban Development, Room 9156, 451 7th Street SW, Washington DC 20410–0500; telephone (202) 708–6401, or on e-mail through Internet at David__R.__Williamson@hud.gov. For hearing and speech impaired persons, the telephone number may be accessed by calling the Federal Information Relay Service at 1–800–877–8339. (Other than the ''800'' number, these telephone numbers are not toll free.)

Background

The National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. 5401–5426), initiated a program that, in part, provides for the establishment by the Department of standards by which all Manufactured Homes are constructed. It further provides for preemption by these standards of all standards of a State or

political subdivision applicable to the same aspect of performance of a Manufactured Home that are not identical to the Federal Manufactured Home construction and safety standard.

By **Federal Register** Notice dated February 26, 1997 (62 FR 8664), the Department requested of the public nominations for persons interested in being appointed, in one of the three general categories cited above, as members of the National Manufactured Home Advisory Council. A total of 52 nominations were received, and from that number 24 have been selected by the Secretary to serve on the Council. In addition, one person has been selected as an alternate in each of the three categories. All appointments to the Council shall be effective for a period of 2 years from the publication date of this Notice in the **Federal Register**.

Selections

Those persons selected by the Secretary to serve on the National Manufactured Home Advisory Council are listed below by the major interest category which they represent and the localities and States from which they come:

Consumer

Berger, Jack, Harrisburg, PA
Cook, Clarence, Shelby, Township, MI
Gaberlavage, George J., Washington, D.C.
Maskiell, George E., Concord, NH
Nanni, James, Yonkers, NY
Ryan, James V., Potomac, MD
Bowman, Mary Beth, Little Rock, AR
Williams, William, Largo, FL
Shelton, Gladys, Athens, GA Alternate

Government

Boyer, John F., Jr., Harrisburg, PA
Byrd, Arnold J., Albany, NY
Cammarosano, Michael F., Baton Rouge, LA
Cullum, Fred B., Burlingame, CA
Denman, Ann McK., Austin, TX
Lee, Allen D., Portland, OR
McCullough, Robert A., Toms River, NJ
Zingeser, Joel P., Gaithersburg, MD
Bryant, William R., Anne Arundel Co., MD, Alternate

Industry

Chambliss, Charles W., Elkhart, IN
Henry, Robert J., Riverside, CA
Huddleston, Roger, Mahomet, IL
Hug, William, Phoenix, AZ
Hussey, Edward, Goshen, IN
Weidner, Samuel V., Elkhart, IN
Wells, Jack, Syracuse, NY
Wells, Walter E., West Middlebury, IN
Allen, George F., Jr., Indianapolis, IN, Alternate

Dated: May 29, 1998.

Art Agnos,

Acting General Deputy Assistant Secretary for Housing-Deputy Federal Housing Commissioner.

[FR Doc. 98–14863 Filed 6–3–98; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4374–N–02]

Manufactured Housing Construction and Safety Standards: Notice Announcing the Selection of a Private Consensus Standards Development Organization

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice of selection of a private consensus standards development organization.

SUMMARY: By a **Federal Register** Notice published on August 6, 1997 (62 FR 42382), HUD requested statements of interest from organizations interested in coordinating and developing suggestions for changes to the Federal Manufactured Home Construction and Safety Standards (FMHCSS). HUD would consider these suggestions for adoption into the FMHCSS, through HUD's regular notice-and-comment rulemaking process. Through a similar process completed 10 years ago, HUD had selected the Council of American Building Officials to help develop and maintain recommended standards. Based upon the statements of interest received in response to the August 7, 1997, Notice, HUD is announcing the selection of the National Fire Protection Association (NFPA) for this purpose. HUD will, however, continue to consider standards developed by organizations and persons other than NFPA for incorporation into the FMHCSS.

FOR FURTHER INFORMATION CONTACT: David R. Williamson, Director, Office of Consumer and Regulatory Affairs, Department of Housing and Urban Development, Room 9156, 451 7th Street SW, Washington DC 20410–0500; telephone (202) 708 6401, or on e-mail through Internet at David__R.__Williamson@hud.gov. For hearing and speech impaired persons, the telephone number may be accessed by calling the Federal Information Relay Service at 1–800–877–8339. (Other than the ''800'' number, these telephone numbers are not toll free.)

Background

The National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. 5401–5426), initiated a program that, in part, provides for the establishment by the Department of standards by which all Manufactured Homes are constructed. It further provides for preemption by these standards of all standards of a State or political subdivision applicable to the same aspect of performance of a Manufactured Home that are not identical to the Federal Manufactured Home construction and safety standard.

In the August 6, 1997 **Federal Register** Notice, the Department requested statements of interest from private organizations to administer a voluntary process for the development of suggested Manufactured Housing standards. The Department was seeking to use a private consensus standards development organization to speed up the process of developing new standards to the benefit of both the consumer and the industry. Among other requirements, the Department wanted assurances that the submitting organization would seek to ensure that its suggestions for changes to the FMCHSS reflect a balance of interests and that the submitting organization would be willing to give priority consideration to developing suggestions for standards identified by the Department as requiring prompt attention. The Department further stated that by use of this standards development process it would not relinquish its responsibility and authority under the Act to establish and enforce the FMHCSS. The Department hopes, however, that under most circumstances, standards developed by this voluntary standards body would be accepted as submitted for publication as a proposed rule and it would go through the full notice-and-comment rulemaking set out in the Administrative Procedure Act (5 U.S.C. 553). Finally, the Department listed what it wished to see in the statements of interest and the criteria to be used in reviewing them. A similar process had been used by the Department when it announced the first selection of a voluntary standards development organization (CABO).

Selection

In response to the August 6, 1997 **Federal Register** Notice, the Department received several sets of comments and two entities responded with proposals for selection as HUD's consensus standards development organization. These were the Council of American Building Officials and the National Fire

Protection Association. The Department carefully evaluated these proposals in relation to the criteria for reviewing statements of interest. Subsequent to that it invited each organization to come to HUD and meet with program officials, both to respond to identical questions posed to each organization and to permit each organization to present any matter to HUD officials that it deemed appropriate and ask any questions. Following these meetings the Department gave further consideration to which entity should be selected.

Based upon the foregoing, the Department announces the selection of the National Fire Protection Association to be a consensus standards development organization to develop and maintain recommended standards for the Manufactured Housing program. NFPA will thus replace the selection of CABO made in 1988. There is no agreement between the Department and the NFPA that obligates the NFPA to develop recommended standards or that obligates the Department to use or pay for the development of recommended standards. This selection in no way precludes any other individual or entity from making recommendations to the Department regarding program standards; such recommendations will also be reviewed and considered by the Department for incorporation into the FMHCSS, as required by law.

Dated: May 29, 1998.

Art Agnos,

Acting General Deputy Assistant Secretary for Housing-Deputy Federal Housing Commissioner.

[FR Doc. 98–14864 Filed 6–3–98; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF THE INTERIOR

National Recreation Lakes Study; Notice of Interest Briefing

AGENCY: National Recreation Lakes Study.

ACTION: Notice of Interest Briefing on National Recreation Lakes Study.

SUMMARY: The Omnibus Parks and Public Land Management Act of 1996 authorizes a presidential commission to review the demand for recreation at Federal lakes, and to develop alternatives for enhanced recreation uses, primarily through innovative public/private partnerships. This briefing will provide information on the study and allow for ideas to be expressed. Commissioner designee, Dr. John Zirschky, Acting Assistant Secretary of the Army, will be in attendance.

DATES: June 11, 1998, starting at 10 a.m.

ADDRESSES: The briefing location is in the first floor Auditorium of the South Interior Building, 1951 Constitution Ave. NW. Please have photo identification available for admission into the building.

FOR FURTHER INFORMATION CONTACT: Jeanne Whittington, 202–219–7104.

Dated: May 29, 1998.

Jana Prewitt,

Executive Director, National Recreation Lakes Study.

[FR Doc. 98–14801 Filed 6–3–98; 8:45 am]

BILLING CODE 4310–94–P

DEPARTMENT OF THE INTERIOR

Geological Survey

Federal Geographic Data Committee (FGDC); Public Review of the ''Spatial Data Transfer Standard, Part 5: Raster Profile and Extensions''

ACTION: Notice; request for comments.

SUMMARY: The FGDC is sponsoring a public review of the draft ''Spatial Data Transfer Standard, Part 5: Raster Profile and Extensions''.

The FGDC recognizes that standards must meet the needs and recognize the views of State and local governments, academia, industry, and the public. The purpose of this notice is to solicit such view. The FGDC invites the community to review, test, and evaluate the proposed standard. Comments are encouraged about the content, completeness, applicability, and usability of the proposed standard.

The FGDC anticipates that the proposed standard will be adopted as Federal Geographic Data Committee standard after updating or revision. The standard may be forwarded to voluntary standards bodies for adoption if interest warrants such actions.

DATES: Comments must be received on or before July 20, 1998.

CONTACT AND ADDRESSES: Requests for written copies of the standard should be addressed to ''Spatial Data Transfer Standard, Part 5: Raster Profile and Extensions'', FGDC Secretariat (attn: Jennifer Fox), U.S. Geological Survey, 590 National Center, 12201 Sunrise Valley Drive, Reston, Virginia, 20192; telephone 703–648–5514; facsimile 703–648–5755; or Internet at gdc@usgs.gov. The standard may be downloaded from this Internet address: ftp://www.fgdc.gov/Standards/Documents/Standards/SDTS__Pt5/.

Reviewer's comments may be sent to the FGDC via Internet mail to: gdc-sdtsras@www.fgdc.gov. Reviewer comments may also be sent to the FGDC Secretariat at the above address. Please send one hardcopy version of the comments and a soft copy version, preferably on a 3.5x3.5 diskette in WordPerfect 5.0 or 6.0/6.1 format.

SUPPLEMENTARY INFORMATION: The Spatial Data Transfer Standard (SDTS) defines a general mechanism for the transfer of geographically referenced spatial data and its supporting metadata, i.e., attributes, data quality reports, coordinate reference systems, security information, etc. The overriding principle that SDTS promotes is that the spatial data transfer should be self-documenting. The data set in SDTS should contain all of the information that is needed to assess and (or) use the data for any appropriate GIS application. The SDTS base specification (Parts 1, 2 and 3) is implemented via profiles of SDTS. A SDTS profile, in general terms, may be defined as a limited subset of the standard, designed for use with a specific type of data model, i.e., topological vector, point, grid, image, etc. Specific choices are made for encoding possibilities not addressed, left optional, or left with numerous choices within the SDTS base specification. A profile may also specify extensions to the base standard to address changing technologies, and to take advantage of other industry standards. For raster image data, there are numerous standards, with various properties, restrictions, and degrees of implementation. The SDTS Raster Profile and Extensions (SRPE) permits the use of two common industry standards for image data: Basic Image Interchange Format (BIIF) and Tagged Image File Format (TIFF). The BIIF defines a general mechanism for the transfer of image data and any support data, i.e. image parameters, visualization parameters, compression parameters, text annotations, symbols, etc. BIIF is an ANSI/ISO standard and is in wide the use in the commercial military community (formerly NITF). TIFF is a general purpose image file format that is used widely for simple image applications.

For answers to questions related to the content of the standard please contact the Federal Geographic Data Committee (FGDC) Subcommittee on Base Cartographic Data, attn. Mark Demulder, U.S. Geological Survey, 511 National Center, Reston, VA 20192.

Dated: May 14, 1998.

Richard E. Witmer,

Chief, National Mapping Division, U.S. Geological Survey.

[FR Doc. 98–14804 Filed 6–3–98; 8:45 am]

BILLING CODE 4310–Y7–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–932–1430–01; F–92350]

Public Land Order No. 7336; Extension of Public Land Order No. 5645 and Transfer of Jurisdiction, Poker Creek Border Station; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order extends Public Land Order No. 5645, which withdrew approximately 10 acres of public land from surface entry and mining for protection of the Poker Creek Border Station for an additional 20 year period, and transfers administrative jurisdiction from the U.S. Department of the Treasury, Bureau of Customs, to the General Services Administration. The land will be administered by the General Services Administration, and used jointly with the Bureau of Customs and the Immigration and Naturalization Service as a border inspection station to aid in the enforcement of the Customs and Immigration laws.

EFFECTIVE DATE: July 19, 1998.

FOR FURTHER INFORMATION CONTACT: Robbie J. Havens, Bureau of Land Management, Alaska State Office, 222 W. 7th Avenue, No. 13, Anchorage, Alaska 99513–7599, 907–271–5049.

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. Public Land Order No. 5645 (43 FR 31006, July 19, 1978), which withdrew 10 acres of public land from settlement, sale, location, or entry under the general land laws, including the United States mining laws (30 U.S.C. Ch. 2 (1994)), is hereby extended for an additional 20-year period.

2. Administrative jurisdiction over the land, as described in Public Land Order No. 5645, is hereby transferred from the U.S. Department of the Treasury, Bureau of Customs, to the General Services Administration.

3. This withdrawal will expire 20 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (1994), the Secretary determines that the withdrawal shall be extended.

Dated: May 14, 1998.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 98–14789 Filed 6–3–98; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–930–1430–01; N–62599]

Notice of Realty Action; Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The following land in Elko County, Nevada is being considered for disposal by direct sale, including the mineral estate with no known value, under Section 203 and Section 209 of the Federal Land Policy and Management Act (FLPMA) of October 21, 1976 (43 U.S.C. 1713 and 1719) at no less than fair market value:

Mount Diablo Meridian, Nevada

T. 33 N., R. 52 E., Section 22, SW¼SW¼, W½SE¼SW¼.

Comprising 60 acres, more or less.

The above described land is being offered as a direct sale to the City of Carlin, Nevada.

FOR FURTHER INFORMATION CONTACT: Detailed information concerning this action is available for review at the Bureau of Land Management, Elko Field Office, 3900 E. Idaho Street, Elko, Nevada.

SUPPLEMENTARY INFORMATION: Upon publication of this Notice of Realty Action in the **Federal Register**, the lands will be segregated from all forms of appropriation under the public land laws, including the mining laws, but not the mineral leasing laws or disposals pursuant to Sections 203 and 209 of FLPMA. The segregation shall terminate upon issuance of a patent or other document of conveyance, upon publication in the **Federal Register** of a Notice of Termination of Segregation, 0r 270 days from date of this publication, which ever occurs first. For period of 45 days from the date of publication in the **Federal Register**, interested parties may submit comments to the Bureau of Land Management, Elko Field Office, 3900 E. Idaho Street, Elko, Nevada 89801. Any adverse comments will be evaluated by the State Director, who may sustain, vacate or modify this realty action and issue a final determination. In the absence of timely filed objections, this realty action will become a final determination of the Department of the Interior.

Dated: May 21, 1998.

Helen Hankins,

District Manager.

[FR Doc. 98–14790 Filed 6–3–98; 8:45 am]

BILLING CODE 4310–HC–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–957–1430–00]

Idaho: Filing of Plats of Survey; Idaho

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. May 26, 1998.

The plat representing the dependent resurvey of a portion of the subdivisional lines, and of the 1908 meander lines of the left bank of the Snake River and the subdivision of section 8, T. 6 S., R. 12 E., Boise Meridian, Idaho, Group 1007, was accepted May 26, 1998.

This survey was executed to meet certain administrative needs of the Bureau of Land Management.

All inquiries concerning the surveys 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: May 26, 1998.

Duane E. Olsen,

Chief Cadastral Surveyor for Idaho.

[FR Doc. 98–14792 Filed 6–3–98; 8:45 am]

BILLING CODE 4310–66–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

CALFED Bay-Delta Program, California

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of extension of time for review of draft programmatic environmental impact statement/environmental impact report (EIS/EIR) and intent to prepare a revised draft programmatic EIS/EIR.

SUMMARY: The Bureau of Reclamation (Reclamation) is extending the public review period for the Draft Programmatic EIS/EIR for the CALFED Bay-Delta Program to July 1, 1998. The notice of availability for the Draft

Programmatic EIS/EIR was published in the **Federal Register** on March 16, 1998 (63 FR 12823). The public review period was originally to end on June 1, 1998.

In addition, CALFED will be preparing a Revised Draft Programmatic EIS/EIR. The Revised Draft Programmatic EIS/EIR will identify a draft preferred alternative and will have revised appendices. It will be available for public review and comment before preparation of a Final Programmatic EIS/EIR.

DATES: Public comments on the Draft Programmatic EIS/EIR should be submitted on or before July 1, 1998. The Revised Draft Programmatic EIS/EIR is expected to be available for public review by the end of 1998.

ADDRESSES: Written comments on the Draft Programmatic EIS/EIR should be addressed to Mr. Rick Breitenbach, CALFED Bay-Delta Program, 1416 Ninth Street, Suite 1155, Sacramento, California 95814. Requests for a printed copy of the Draft Programmatic EIS/EIR should also be addressed to Mr. Rick Breitenbach. When requesting a copy, please specify whether you would like the Executive Summary or a complete set of the Draft EIS/EIR with 12 Appendices.

FOR FURTHER INFORMATION CONTACT: For additional information, contact Mr. Rick Breitenbach, telephone: (800) 900–3587.

Dated: May 28, 1998.

Kirk C. Rodgers,

Deputy Regional Director.

[FR Doc. 98–14800 Filed 6–3–98; 8:45 am]

BILLING CODE 4310–94–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Proposed Water Service Contract, El Dorado County Water Agency, El Dorado County, CA

AGENCY: Bureau of Reclamation, Interior.

ACTION: Supplemental notice of intent to prepare a draft environmental impact statement/environmental impact report (EIS/EIR) and notice of scoping meetings.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969 (as amended) and Section 21061 of the California Environmental Quality Act (CEQA), the Bureau of Reclamation (Reclamation) and El Dorado County Water Agency (Agency) intend to prepare a joint EIS/EIR for a water service contract from the Central Valley Project, California.

The proposed project consists of a water supply contract for the Agency under which Reclamation would provide up to 15,000 acre-feet/year from Folsom Reservoir. The Agency's provisional plans, subject to review and potential revision during the EIS/EIR process, are to divide this water equally between El Dorado Irrigation District (EID) and Georgetown Divide Public Utility District (GDPUD). EID proposes to take its supply from Folsom Reservoir. GDPUD proposes to take its supply either from Folsom Reservoir or upstream by way of a water exchange with Placer County Water Agency (PCWA). The GDPUD diversion facility is proposed to either be co-located with a PCWA site or located adjacent to the Auburn Dam diversion tunnel, at the mouth of Knickerbocker Canyon, or about 3,000 feet upstream of the Auburn Dam diversion tunnel near Tamaroo Bar.

DATES: Two public scoping meetings for this project will be held. The meetings will be at 6:30 p.m. on August 6, 1998, and at 1:30 p.m. on August 7, 1998, to help identify alternatives and significant issues to be addressed in the draft EIS/EIR. Arrangements for special services at the meeting must be requested no later than July 31, 1998 (see Supplementary Information section for more details).

Written comments on the scope of the EIS/EIR may be sent to the Agency at the address below by August 21, 1998.

ADDRESSES: The scoping meetings will be held at the El Dorado County Board of Supervisors Chambers, 330 Fair Lane, Building A, in Placerville, California.

Please send written comments on the scope of the EIS/EIR to Merv de Haas, General Manager, El Dorado County Water Agency, 330 Fair Lane, Placerville, California 95667, telephone: (530) 621–5392.

FOR FURTHER INFORMATION CONTACT: Mr. Rod Hall, Environmental Specialist, Bureau of Reclamation, 7794 Folsom Dam Road, Folsom, California 95630, telephone: (916) 989–7279, or Mr. Merv de Haas at the above address and telephone number.

SUPPLEMENTARY INFORMATION: The contract to be negotiated has been authorized and directed by the United States Congress as part of Public Law 101–514. This contract has been excluded from the prohibition on new contract funding found in Public Law 102–575.

Public Law 101–514 directs the Secretary of the Interior (Secretary) to enter into long-term municipal and industrial water supply contracts to meet the immediate water needs of El Dorado County. The law directs the Secretary to enter into a contract for up to 15,000 acre-feet/year with the Agency.

The EIS/EIR will include evaluation of the ''no project'' alternative, alternative diversion points, and alternative treatment and delivery facilities. Alternative diversion points include a point near the confluence of the American and Sacramento Rivers and several upstream locations on the Middle Fork of the American River. Alternative EID treatment facilities include the existing El Dorado Hills treatment plant and a new treatment plant at Bass Lake. GDPUD proposes to treat the water at a new facility located near the town of Cool, the specific location depending on which diversion point is selected. The EIS/EIR will also address impacts to the physical environment from diversion, distribution, and use of the contract water. The documentation will include analysis of the potential impacts to the natural environment, particularly aquatic, wetland, and riparian communities, including any effect on special-status species, recreation resource values, and related socio-economic values. Secondary growth impacts associated with the water delivery and secondary impacts associated with construction of water delivery facilities used to divert, treat, and distribute Folsom Reservoir water will be investigated.

The proposed project has been the subject of previous scoping meetings that were published in the **Federal Register** (58 FR 28034, May 12, 1993). However, because of changes in proposed alternatives resulting from those meetings and related correspondence, additional scoping activities are being initiated at this time.

Special Services

A headphone device for the hearing impaired will be available at the meetings. Persons requiring other special services should contact Debby Holcomb of the Agency at (530) 621–5392. Please notify this office as far in advance of the meetings as possible, but no later than July 31, 1998, to enable the Agency to secure the needed services. If a request cannot be honored, the requester will be notified.

Dated: May 28, 1998.

Kirk C. Rodgers,

Deputy Regional Director.

[FR Doc. 98–14799 Filed 6–3–98; 8:45 am]

BILLING CODE 4310–94–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 731–TA–698 (Remand)]

Magnesium From Ukraine; Notice and Scheduling of Remand Proceedings

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The U.S. International Trade Commission (the Commission) hereby gives notice of the remand of its final antidumping investigation No. 731–TA–698 (Final) for reconsideration in light of the order of the Court of International Trade.

EFFECTIVE DATE: June 4, 1998.

FOR FURTHER INFORMATION CONTACT: Olympia Hand, Office of Investigations, telephone 202–205–3193, Michael Diehl, Office of General Counsel, telephone 202–205–3095, or Rhonda M. Hughes, Office of General Counsel, telephone 202–205–3083, U.S. International Trade Commission. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

SUPPLEMENTARY INFORMATION:

Background

On April 28, 1998, the Court of International Trade issued a remand Order to the Commission in *Gerald Metals, Inc.* v. *United States,* Ct. No. 95–06–00782, Slip. Op. 98–56. The case involved review of the Commission's May 1995 affirmative material injury determination in *Magnesium from Ukraine,* Inv. No. 731–TA–698 (Final). The CIT ordered the Commission to reconsider its final determination in a way that is consistent with the legal standard articulated by the Court of Appeals for the Federal Circuit (''CAFC'') in *Gerald Metals, Inc.* v. *United States,* 132 F.3d 716 (Fed. Cir. 1997) and that takes into account the fairly traded Russian imports of pure magnesium and the increase in the market share of those imports during the period of review.

Reopening Record

In order to assist it in making its determination on remand, the Commission is reopening the record on remand in this investigation to seek information regarding imports of fairly traded Russian pure magnesium, and to permit parties to file briefs.

Participation in the Proceedings

Only those persons who were interested parties to the original administrative proceedings (i.e., persons listed on the Commission Secretary's service list) may participate in these remand proceedings.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Information obtained during the remand investigation will be released to parties under the administrative protective order (''APO'') in effect in the original investigation. Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make business proprietary information gathered in the final investigation and this remand investigation available to additional authorized applicants, that are not covered under the original APO, provided that the application is made not later than seven (7) days after publication of the Commission's notice of reopening the record on remand in the **Federal Register**. Applications must be filed for persons on the Judicial Protective Order in the related CIT case, but not covered under the original APO. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO in this remand investigation.

Written Submissions

Briefs should be concise, and thoroughly referenced to information on the record in the original investigation or information obtained during the remand investigation. The briefs should be limited to the following issues: (1) the legal standard articulated by the CAFC in *Gerald Metals* v. *United States,* 132 F.3d 716 (Fed. Cir. 1997); and (2) the extent and significance of the substitutability of the fairly traded and LTFV Russian imports. Written briefs shall be limited to twenty (20) pages, and must be filed no later than close of business on June 12, 1998. No further submissions will be permitted unless otherwise ordered by the Commission.

All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain business proprietary information (BPI) must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This action is taken under the authority of the Tariff Act of 1930, title VII.

Issued: May 29, 1998.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 98–14866 Filed 6–3–98; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–411]

Certain Organic Photoconductor Drums and Products Containing the Same; Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. § 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on April 30, 1998, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, on behalf of Mitsubishi Chemical Corporation, 5–2, Marunouchi, 2-chome, Chiyoda-ku, Tokyo 100 Japan, and Mitsubishi Chemical America, Inc., One North Lexington Avenue, White Plains, New York 10601. Supplements to the complaint were filed on May 18 and May 28, 1998, and a letter withdrawing the complaint as to two of the proposed respondents was filed on May 26, 1998. The complaint, as supplemented, alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain organic photoconductor drums and products containing the same that infringe claim 1 of U.S. Letters Patent 4,680,246 and claims 1, 2, 3, 5, and 7 of U.S. Letters Patent 4,396,696. The complaint further alleges that there exists an industry in the United States as required by subsection (a)(2) of section 337.

The complainants request that the Commission institute an investigation and, after a hearing, issue a permanent exclusion order and permanent cease and desist orders.

ADDRESSES: The complaint and supplement, except for any confidential information contained therein, are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Room 112, Washington, D.C. 20436, telephone 202–205–2000. Hearing-impaired individuals are

advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

FOR FURTHER INFORMATION CONTACT: Jeffrey R. Whieldon, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–205–2580.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR § 210.10 (1997).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on May 29, 1998, *Ordered* That—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain organic photoconductor drums or products containing the same by reason of infringement of claim 1 of U.S. Letters Patent 4,680,246 or claims 1, 2, 3, 5, or 7 of U.S. Letters Patent 4,396,696, and whether there exists an industry in the United States as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainants are—

Mitsubishi Chemical Corporation 5–2, Marunouchi, 2-chome, Chiyoda-ku, Tokyo 100 Japan

Mitsubishi Chemical America, Inc., One North Lexington Avenue, White Plains, New York 10601

(b) The respondents are the following companies alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

AEG Elektrofotografie GmbH, Emil-Siepmann-Strasse 40, D–59581 Warstein, Germany

AEG Photoconductor Corp., 27 Kiesland Court, Hamilton, Ohio 45015–1375

Dainippon Ink & Chemicals, Inc., DIC Building 3–7–20, Nihonbashi, Chuo-ku, Tokyo 103, Japan

DIC Trading (USA), Inc., 222 Bridge Plaza South, Fort Lee, New Jersey 07024

Fuji Electric Co., Ltd., Shinjuku Koyama Bldg., 30–3, Yoyogi 4-chome, Shibuya-ku, Tokyo 151, Japan

Fuji Denki, Hong Kong Fuji Denki Plant 8 Dai Fu Street Tai Po, Industrial Estate N.T. Hong Kong

U.S. Fuji Electric, Inc., 240 Circle Drive North, Piscataway, New Jersey 08854

Shindengen Electric Manufacturing Co., Ltd., Ikebukuro Bldg., 13–23, 1-chome, Minami-Ikebukuro, Toshima-ku, Tokyo 171, Japan

Lumphun Shindengen Co., Ltd., Northern Region Industrial Estate, 105 M00 4 Bangland, Muang, Lumphun 51000 Thailand

Shindengen America, Inc., 2649 Townsgate Road, Suite 200, Westlake Village, California 91361

Sinonar Corp., 8 Prosperity Road 1, Science-Based Industrial Park, Hsinchu, Taiwan

Yamanashi Electronics Co., Ltd., 1014, Miyaharacho, Kofu, YMA 400 Japan

(c) Jeffrey R. Whieldon, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, S.W., Room 401–H, Washington, D.C. 20436, shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, the Honorable Sidney Harris is designated as the presiding administrative law judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 C.F.R. § 210.13. Pursuant to 19 C.F.R. §§ 201.16(d) and 210.13(a) of the Commission's Rules, such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or a cease and desist order or both directed against such respondent.

Issued: May 29, 1998.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 98–14865 Filed 6–3–98; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

President's Advisory Board on Race

ACTION: President's Advisory Board on Race; Notice of meeting.

SUMMARY: The President's Advisory Board on Race will meet on June 18, 1998 at the White House Conference Center, 726 Jackson Place, NW, Washington, DC. The Advisory Board will meet from 9:30 a.m. until approximately 12:00 p.m. to discuss and analyze information that has been gathered during the course of the year.

The public is welcome to attend the Advisory Board meeting on a first-come, first-seated basis. Members of the public may also submit to the contact person, any time before or after the meeting, written statements to the Board. Written comments may be submitted by mail, telegram, facsimile, or electronic mail, and should contain the writer's name, address and commercial, government, or organizational affiliation, if any. The address of the President's Initiative on Race is 725 17th Street, NW, Washington, DC 20503. The electronic mail address is http://www.whitehouse.gov/Initiatives/OneAmerica.

FOR FURTHER INFORMATION CONTACT: Comments or questions regarding this meeting may be directed to Randy D. Ayers, (202) 395–1010, or via facsimile, (202) 395–1020.

Dated: June 1, 1998.

Randy D. Ayers,

Executive Officer.

[FR Doc. 98–14896 Filed 6–3–98; 8:45 am]

BILLING CODE 4410–13–M

DEPARTMENT OF JUSTICE

[AAG/A Order No. 151–98]

Privacy Act of 1974; Notice of New System of Records

Pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. 552a), notice is hereby given that the Department of Justice proposes to establish a new system of records to be

maintained by the Federal Bureau of Investigation (FBI).

The National Instant Criminal Background Check System (NICS) JUSTICE/FBI–018, is a new system of records for which no public notice consistent with the provision of 5 U.S.C. 552a(e)(4) and (11) has been published.

In the rules section of today's **Federal Register**, the Department of Justice provides a proposed rule exempting the NICS from certain provisions of the Privacy Act, as well as proposed rules to establish policies and procedures for operating the system, ensuring the privacy and security of the NICS, and implementing its alternative access and appeal provisions.

In accordance with 5 U.S.C. 552a(e)(4) and (11), the public is given a 30-day period in which to comment on the new routine uses; the Office of Management and Budget (OMB), which has oversight responsibility under the Act, requires a 40-day period in which to conclude its review of the system. Therefore, please submit any comments by July 6, 1998. The public, OMB, and the Congress are invited to submit any comments to Patricia E. Neely, Program Analyst, Information Management and Security Staff, Justice Management Division, Department of Justice, Washington, DC 20530 (Room 850, WCTR Building).

In accordance with 5 U.S.C. 552a(r), the Department has provided a report to OMB and the Congress.

Dated: May 7, 1998.

Stephen R. Colgate,

Assistant Attorney General for Administration.

JUSTICE/FBI–018

SYSTEM NAME:

National Instant Criminal Background Check System (NICS).

SYSTEM LOCATION:

Federal Bureau of Investigation, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The categories of individuals covered by the system include any person who:

A. Is under indictment for, or has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;

B. Is a fugitive from justice;

C. Is an unlawful user of or addicted to any controlled substance;

D. Has been adjudicated as a mental defective or has been committed to a mental institution;

E. Is an alien who is illegally or unlawfully in the United States;

F. Has been discharged from the Armed Forces under dishonorable conditions;

G. Having been a citizen of the United States, has renounced such citizenship;

H. Is subject to a court order that restrains the person from harassing, stalking, or threatening an intimate partner or child of such intimate partner (issued after a hearing of which actual notice was received);

I. Has been convicted in any court of a misdemeanor crime of domestic violence (involving the use or attempted use of physical force committed by a current or former spouse, parent, or guardian of the victim or by a person with a similar relationship with the victim);

J. Is otherwise disqualified from possessing a firearm under State law;

K. Is a Federal firearms licensee (FFL), i.e., a person licensed by the Bureau of Alcohol, Tobacco and Firearms (ATF), United States Department of Treasury, as a manufacturer, dealer, or importer of firearms, and authorized by the FBI to request NICS background checks; or

L. Has applied for the purchase of a firearm or a firearms-related permit or license and has had his or her name forwarded to the NICS as part of a request for a NICS background check. (Identifying information about this category of individual is maintained for system administration and security purposes only in the ''NICS Audit Log,'' a system transaction log described below under the headings ''CATEGORIES OF RECORDS IN THE SYSTEM'' AND ''RETENTION AND DISPOSAL.'' In cases where the NICS background check does not locate a disqualifying record, information about the individual will only be retained temporarily for audit purposes and will be destroyed after eighteen months. The system will not contain any details about the type of firearm which is the subject of the proposed transfer (other than the fact that it is a handgun or a long gun) or whether a sale or transfer of a firearm has actually taken place.)

CATEGORIES OF RECORDS IN THE SYSTEM:

The ''NICS Index'' is the only database maintained by the FBI which was created specifically for the NICS. The NICS Index contains records obtained by the Attorney General from Federal agencies or States on individuals who fall into the categories of individuals listed above under the hearing ''CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM,'' C through G. These records contain an individual's name; sex; race; complete date of birth; state of residence; sometimes a unique identifying number, such as a Social Security number (but NICS does not require it to be furnished), a military number, or a number assigned by Federal, State, or local law enforcement authorities.

The ''NICS Audit Log'' is a chronological record of system (computer) activities that enables the reconstruction and examination of a sequence of events and/or changes in an event related to the NICS. With regard to a specific NICS transaction, the audit log will include: the name and other identifying information about the prospective purchaser; the type of transaction (inquiry or response); line number; time; date of inquiry; header; message key; Originating Agency Identifier; and inquiry/response data, such as a NICS Transaction Number (a unique number assigned to each valid background request inquiry) and information found by the NICS search.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

(1) 18 U.S.C. 922, as amended by the Brady Handgun Violence Prevention Act (the ''Brady Act'') (Pub. L. 103–159, Nov. 30, 1993); (2) 28 U.S.C. 534, as amended (Pub. L. 103–322, Title IV, 4060(a), Sep. 13, 1994, 105 Stat. 1950).

PURPOSE(S):

The purpose of the NICS, which was established pursuant to the Brady Act, is to provide a means of checking available information to determine whether there is reasonable cause to believe that a person is disqualified from possessing a firearm under Federal or State law.

Prior to the transfer of a firearm, a prospective purchaser, not licensed under 18 U.S.C. 923, must obtain a firearms transaction form from an FFL and provide the information required by the ATF. The firearms transaction form is returned to the FFL, who is required by the Brady Act to contact the NICS and furnish the name and certain other identifying data provided by the purchaser. NICS conducts a search which compares the information about the purchaser with information in or available to NICS.

State and local law enforcement agencies serve as Points of Contact (POCs) for the NICS. Where there is no POC, the FBI's NICS Operations Center serves in its place. The POC (or the NICS Operations Center) receives inquiries from FFLs, initiates NICS background searches, may check available state and local record systems, determines whether matching records provide reason to believe that an individual is disqualified from possessing a firearm under Federal or

State law, and responds back to the FFLs.

In addition to a review of the NICS Index, a NICS search includes a review of the pre-existing, separately-managed FBI criminal history databases of the National Crime Information Center (NCIC)(JUSTICE/FBI–001), including the Interstate Identification Index (III) portion of NCIC, to the extent such searches are possible with the available information. NCIC and III are cooperative Federal-State programs for the exchange of criminal history record and other information among criminal justice agencies to locate wanted and missing persons and for other identification purposes. The search conducted of the NCIC and III, in conjunction with the search of the NICS Index, attempts to locate only information indicating that an individual firearm purchaser is identical to an individual in one or more of categories A through J listed above under the heading **CATEGORIES OF INDIVIDUALS IN THE SYSTEM**, with the search of NCIC and III specifically directed towards locating information that an individual is within categories A, B, H, and I.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

A. Limited information may be provided by a Point of Contact or the NICS Operations Center to an FFL who has contacted the NICS concerning a prospective firearm purchaser. If a matching record found by the NICS provides reasonable cause to believe that the prospective purchaser is disqualified from possessing a firearm under Federal or State law, the FFL will be notified only that the application is ''denied,'' with none of the underlying information provided. If additional record analysis is required by the NICS representative, the response may read ''delayed.'' If no disqualifying record is located by the NICS, the FFL will be told to ''proceed.'' A unique identification number will be provided to the FFL for all responses received from the NICS, which number shall be recorded on the firearms transaction form.

B. Information in the NICS may be provided through the NCIC lines to Federal criminal justice agencies, criminal justice agencies in the fifty States, the District of Columbia, Puerto Rico, U.S. Possessions, and U.S. Territories, including Points of Contact and contributors of information in the NICS Index, to enable them to determine whether the transfer of a firearm to any person not licensed under 18 U.S.C. 923 would be in violation of Federal or State law; whether the issuance of a license or permit for the possession or sale of a firearm or firearms would be in violation of Federal or State law or regulation; whether appeals from denials should be granted or denied; and whether to add to, delete from, revise, or update information previously provided by the contributor.

C. If, during the course of any activity or operation of the system authorized by the regulations governing the system (28 CFR, part 25, subpart A), any record is found by the system which indicates, either on its face or in conjunction with other information, a violation or potential violation of law (whether criminal or civil) and/or regulation, or a violation or potential violation of a contract, the pertinent record may be disclosed to the appropriate agency/organization/task force (whether Federal, State, local, joint, or tribal) and/or to the appropriate foreign or international agency/organization charged with the responsibility of investigating, prosecuting, and/or enforcing such law, regulation, or contract, e.g., disclosure of information from the system to the ATF, United States Department of Treasury, regarding violations or potential violations of 18 U.S.C. 922(a)(6).

D. System records may be disclosed to contractors, grantees, experts, consultants, volunteers, detailees, and other non-FBI employees performing or working on a contract, service, grant, cooperative agreement, or job for the Federal Government when necessary to accomplish an agency function related to this system of records and under requirements (including Privacy Act requirements) specified by the FBI.

E. System records may be disclosed to the news media or members of the general public or to a victim or potential victim in furtherance of a legitimate law enforcement or public safety function, e.g., to assist in locating fugitives; to provide notification of arrests; to provide alerts, assessments, or similar information on potential threats to life, health, or property; or to keep the public appropriately informed of other law enforcement or FBI matters of legitimate public interest in accordance with 28 CFR 50.2. System records may also be disclosed to the news media or general public in other situations of legitimate public interest where disclosure would not constitute a clearly unwarranted invasion of personal privacy.

F. Where the disclosure of system records has been determined by the FBI to be reasonable and necessary to resolve a matter in litigation or in anticipation thereof, such records may be disclosed to a court or adjudicative body, before which the FBI is authorized to appear, when: (a) The FBI or any FBI employee in his or her official capacity; (b) any FBI employee in his or her individual capacity where the Department of Justice has agreed to represent the employee; or (c) the United States, where the FBI determines it is likely to be affected by the litigation, is or could be a party to the litigation, or has an official interest in the litigation.

G. System records may be made available to a Member of Congress or staff acting on the Member's behalf when the Member or staff requests the information on behalf and at the written request of the individual who is the subject of the record.

H. System records may be disclosed to the National Archives and Records Administration for records management inspections and such other purposes conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored electronically for use in a computer environment in areas safe from access by unauthorized persons or exposure to environmental hazards. In general, the security policy for the NCIC (JUSTICE/FBI–001) is followed.

RETRIEVABILITY:

Records are retrieved by name, sex, race, date of birth, state of residence, the NICS Transaction Number, FFL number, and, in some instances, unique numeric identifier, e.g., a Social Security number or a military identification number. (A Social Security number is not required by the NICS.)

SAFEGUARDS:

Records searched by the NICS are located in secure government buildings with limited physical access. Access to the results of a NICS record search is further restricted to authorized employees of Federal, State, and local law enforcement agencies who make inquiries by use of identification numbers and passwords.

When a Federal, State, or local agency places information in the NICS Index, it uses its agency identifier and a unique agency record identifier for each record provided to the NICS. Federal, State, or local agencies can modify or cancel only the data that they have provided to NICS Index.

RETENTION AND DISPOSAL:

Information provided by other Federal agencies or State or local governments will be maintained in the NICS Index unless updated or deleted by the agency/government which contributed the data.

The FBI will maintain an Audit Log of all NICS transactions. Firearms transaction approvals will be maintained for eighteen months. The NICS Transaction Number (the unique number assigned to the NICS transaction) and the date on which it was assigned will be maintained indefinitely. Information related to firearms transfer denials will be retained for 10 years and then disposed of as directed by the National Achives and Record Administration.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Federal Bureau of Investigation, J. Edgar Hoover FBI Building, 935 Pennsylvania Avenue, NW, Washington, DC 20535–0001.

NOTIFICATION PROCEDURES:

This system of records has been exempted from the notification procedures of subsections (d) and (e)(4)(G), to the extend permitted by subsections (j)(2),(k)(2), and (k)(3) of the Privacy Act. Requests for notification should be addressed to the Systems Manager. Requirements for a request are the same as set forth below under the heading ''RECORD ACCESS PROCEDURES.''

RECORD ACCESS PROCEDURES:

This system of records has been exempted from the access procedures of subsections (d) and (e)(4)(H) to the extend permitted by subsections (j)(2),(k)(2), and (k)(3) of the Privacy Act. A request for access to a non-exempt record from the system should be addressed to the System Manager, shall be made in writing, and should have the envelope and the letter marked ''Privacy Act Request.'' The request must include the full name, complete address, date of birth, and place of birth of the requester. The requester must sign the request; and, to verify it, the signature must be notarized or submitted under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization.

Alternative procedures are available to a person who has been denied the purchase of, or permit for, a firearm because of information in the NICS. The procedures provide for an appeal of a denial and a method to seek the correction of erroneous data searched by or maintained in the system. The alternative procedures can be found at 28 CFR, Part 25, Subpart A.

CONTESTING RECORD PROCEDURES:

This system of records has been exempted from the contest and amendment procedures of subsections (d) and (e)(4)(H) to the extent permitted by subsections (j)(2),(k)(2), and (k)(3) of the Privacy Act. Requests should be addressed to the System Manager and should clearly and concisely describe the precise information being contested, the reasons for contesting it, and the proposed amendment or correction proposed to the information. In addition, as described above under ''RECORD ACCESS PROCEDURES,'' an alternative procedure is available to a person who has been denied the purchase of, or permit for, a firearm because of information in the NICS, by which the individual may seek the correction of erroneous data in the system. The procedures are further described at 28 CFR, part 25, subpart A.

RECORD SOURCE CATEGORIES:

Information contained in the NICS is obtained from local, State, Federal, and international records.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Attorney General has exempted this system from subsections (c)(3) and (4); (d); (e)(1); (2), and (3) (e)(4)(G) and (H); (e)(5) and (8); and (g) of the Privacy Act, pursuant to 5 U.S.C. 552a(j)(2). In addition, the Attorney General has exempted his system from subsections (c)(3), (d), (e)(1), and (e)(4)(G) and (H) of the Privacy Act, pursuant to 5 U.S.C. 552a (k)(2) and (k)(3). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553 (b), (c), and (e), and have been published in the **Federal Register**.

[FR Doc. 98–14797 Filed 6–3–98; 8:45 am]

BILLING CODE 4410–12–M

MERIT SYSTEMS PROTECTION BOARD

Agency Information Collection Activities Under OMB Review

AGENCY: Merit Systems Protection Board (MSPB).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), this notice announces that the Merit Systems Protection Board's request for a second one-year extension of approval of its optional appeal form, Optional Form 283 (Rev. 10/94) has been forwarded to the Office of Management and Budget (OMB) for review and comment. The appeal form is currently displayed in 5 CFR Part 1201, Appendix I, and on the MSPB Web Page at http://www.mspb.gov/merit009.html.

In this regard, the Board is inviting comments on the public reporting burden. The reporting burden for the collection of information on this form is estimated to vary from 20 minutes to one hour per response, with an average of 30 minutes, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

ESTIMATED ANNUAL REPORTING BURDEN

5 CFR section	Annual number of respondents	Frequency per response	Total annual responses	Hours per response (average)	Total hours
1201 and 1209	9,000	1	9,000	.5	4,500

Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden to the address shown below. Please refer to OMB Control No. 3124–0009 in any correspondence.

DATES: Comments must be received on or before July 6, 1998.

ADDRESSES: Copies of the appeal form may be obtained from Arlin Winefordner, Merit Systems Protection Board, 1120 Vermont Ave., NW., Washington, DC 20419 or by calling (202) 653–7200. Comments concerning the paperwork burden should also be addressed to Mr. Winefordner and to Office of Information and Regulatory Affairs, Office of Management and Budget, Attention; Desk Officer for

MSPB, 725 17th Street, NW., Washington, DC 20503.

Dated: June 1, 1998.

Robert E. Taylor,

Clerk of the Board.

[FR Doc. 98–14823 Filed 6–3–98; 8:45 am]

BILLING CODE 7400–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–289]

GPU Nuclear Inc., et al. Three Mile Island Nuclear Station, Unit No. 1; Confirmatory Order Modifying License Effective Immediately

I

GPU Nuclear Inc., (GPUN or the Licensee) is the holder of Facility Operating License No. DRP–50, which authorizes operation of Three Mile Island Nuclear Station, Unit No. 1 located in Dauphin County, Pennsylvania.

II

The staff of the U.S. Nuclear Regulatory Commission (NRC) has been concerned that Thermo-Lag 330–1 fire barrier systems installed by licensees may not provide the level of fire endurance intended and that licensees that use Thermo-Lag 330–1 fire barriers may not be meeting regulatory requirements. During the 1992 to 1994 timeframe, the NRC staff issued Generic Letter (GL) 92–08, ''Thermo-Lag 330–1 Fire Barriers'' and subsequent requests for additional information that requested licensees to submit plans and schedules for resolving the Thermo-Lag issue. The NRC staff has obtained and reviewed all licensees' corrective plans and schedules. The staff is concerned that some licensees may not be making adequate progress toward resolving the plant-specific issues, and that some implementation schedules may be either too tenuous or too protracted. For example, several licensees informed the NRC staff that their completion dates had slipped by 6 months to as much as 3 years. For plants that have completion action scheduled beyond 1997, the NRC staff has met with these licensees to discuss the progress of the licensees' corrective actions and the extent of licensee management attention regarding completion of Thermo-Lag corrective actions. In addition, the NRC staff discussed with licensees the possibility of accelerating their completion schedules.

GPUN was one of the licensees with which the NRC staff held a meeting. At this meeting, the NRC staff reviewed with GPUN the schedule of Thermo-Lag corrective actions described in the GPUN submittals to the NRC dated February 10, 1994, December 5, 1994, July 7, 1995, August 16, 1996, November 5, 1996, December 31, 1996, August 19, 1997, and November 23, 1997, to complete implementation of Thermo-Lag 330–1 fire barriers corrective actions by December 31, 1999, excluding those corrective actions which are the subject of the pending exemption request dated December 31, 1996, and supplemented by letters dated July 31, 1997, September 8, 1997, and December 30, 1997. Based on the information submitted by GPUN and provided during the meeting, the NRC staff has concluded that the schedule presented by GPUN is reasonable. This conclusion is based on the: (1) Amount of installed Thermo-Lag, (2) the complexity of the plant-specific fire barrier configurations and issues, (3) the need to perform certain plant modifications during outages as opposed to those that can be performed while the plant is at power, and (4) integration with other significant, but unrelated issues that GPUN is addressing at its plant. In order to remove compensatory measures such as fire watches, it has been determined that resolution of the Thermo-Lag corrective actions by GPUN must be completed in accordance with the current GPUN schedule. By letter dated April 27, 1998, the NRC staff notified GPUN of its plan to incorporate GPUN's schedule commitment into a requirement by issuance of an order and requested consent from the Licensee. By letter dated May 5, 1998, the Licensee provided its consent to issuance of a Confirmatory Order.

III

The Licensee's commitment as set forth in its letter of May 5, 1998, is acceptable and is necessary for the NRC to conclude that public health and safety are reasonably assured. To preclude any schedule slippage and to assure public health and safety, the NRC staff has determined that the Licensee's commitment in its May 5, 1998, letter be confirmed by this Order. The Licensee has agreed to this action. Based on the above, and the Licensee's consent, this Order is immediately effective upon issuance.

IV

Accordingly, pursuant to sections 103, 161b, 161i, 161o, 182, and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR part 50, *it is hereby ordered*, effective immediately, that:

GPUN shall complete final implementation of Thermo-Lag 330–1 fire barrier corrective actions at Three Mile Island Nuclear Station, Unit No. 1 described in the GPUN submittals to the NRC dated February 10, 1994, December 5, 1994, July 7, 1995, August 16, 1996, November 5, 1996, December 31, 1996, August 19, 1997, and November 23, 1997, by December 31, 1999, excluding those corrective actions which are the subject of the pending exemption request dated December 31, 1996, and supplemented by letters dated July 31, 1997, September 8, 1997, and December 30, 1997. A schedule for completion of any activity associated with the items excluded will be developed separately.

The Director, Office of Nuclear Reactor Regulation, may relax or rescind, in writing, any provisions of this Confirmatory Order upon a showing by the Licensee of good cause.

V

Any person adversely affected by this Confirmatory Order, other than the Licensee, may request a hearing within 20 days of its issuance. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. Any request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Attention: Chief, Rulemaking and Adjudications Staff, Washington, DC 20555. Copies of the hearing request shall also be sent to the Director, Office of Nuclear Reactor Regulation, U. S. Nuclear Regulatory Commission, Washington, DC 20555, to the Deputy Assistant General Counsel for Enforcement at the same address, to the Regional Administrator, NRC Region I, U.S. Nuclear Regulatory Commission, 475 Allendale Rd., King of Prussia, PA 19406–1415, and to the Licensee. If such a person requests a hearing, that person shall set forth with particularity the manner in which his/her interest is adversely affected by this Order and shall address criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any such hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Confirmatory Order should be sustained.

In the absence of any request for hearing, or written approval of an

extension of time in which to request a hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received. An answer or a request for hearing shall not stay the immediate effectiveness of this Order.

Dated at Rockville, MD, this 22nd day of May 1998.

For the Nuclear Regulatory Commission.

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 98–14775 Filed 6–3–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–461]

Illinois Power Co; 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–62 issued to Illinois Power Company (IP, or the licensee) for operation of the Clinton Power Station (CPS) located in DeWitt County, Illinois.

The proposed amendment concerns operation of a new emergency reserve auxiliary transformer (ERAT) to provide power to the plant 4.16-kV busses from the offsite 138-kV transmission network. The new ERAT will have a larger capacity and automatic load tap-changing (LTC) capability.

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.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the 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) Installation of the new ERAT with automatic LTC capability (and increased capacity) will support operability of the 138-kV source for CPS, thus maintaining at least one operable source of offsite electrical power in accordance with Technical Specification 3.8.2. The voltage support provided by the new ERAT LTC will also minimize the probability of a transfer to the onsite emergency diesel generator(s) in the event of high plant load (including a real or inadvertent actuation of ESF [engineered safety feature] systems). These positive effects from the voltage regulation provided by the ERAT LTC support operation of safety systems required for decay heat removal and maintaining the plant in a safe condition, as well as may be required for mitigation of accidents that could occur during plant shutdown conditions.

At the same time, (and as further addressed below) employment of the ERAT LTC introduces the possibility of a new malfunction that could cause plant equipment important to safety to be subjected to overvoltage. However, since the ERAT LTC incorporates a primary and backup means of preventing voltage extremes (high or low), the potential for damage to plant equipment (or an unnecessary trip of the undervoltage relays) is low. The PRA [probabilistic risk assessment] performed for this potential overvoltage condition, under plant shutdown conditions, showed that an event involving overvoltage caused by LTC/LTC-controller failure and which leads to equipment failure and subsequent fuel damage, is not credible.

On the basis of the PRA evaluation, and in consideration of the safety benefit associated with the voltage support provided by the ERAT LTC, IP believes that employment of the ERAT LTC during plant shutdown conditions has no significant adverse impact to plant safety systems. Therefore, the proposed does not involve a significant increase in the probability or consequences of any accident previously evaluated.

(2) In consideration of the potential adverse impacts that the ERAT LTC may have on plant systems, structures or components, such impacts are primarily confined to potential electrical faults or abnormal conditions. With respect to potential adverse electrical impacts, the potential electrical failure modes or abnormal conditions applicable to the ERAT LTC mainly include the same failure modes or conditions that applied to the ERAT as a fixed-tap transformer, except for the potential malfunction of the LTC controller that could cause voltage to be run up or down to excessively high or low values. As noted previously, however, this potential is greatly reduced by the backup controller provided with the ERAT LTC. (For an undervoltage condition, plant equipment would be additionally protected by the plant safety bus degraded voltage relays.) With respect to a potential LTC malfunction that may cause an overvoltage condition, further evaluation by PRA (for plant shutdown conditions) has shown that the probability of an event involving an LTC malfunction that causes an overvoltage condition leading to damage of safety-related equipment and subsequent fuel damage is 2×10^7 per year. This makes such an event incredible. Further, the potential for overvoltage from an LTC malfunction to lead to a new or unanalyzed accident is reduced by the plant being in a shutdown condition, as previously described.

Thus, although the use of the ERAT LTC introduces the possibility of a new equipment malfunction not previously evaluated, based on the above, it does not introduce the possibility of a new or different accident not previously evaluated.

(3) As noted previously, incorporation of the ERAT LTC into the CPS auxiliary power system will regulate plant bus voltage for the 138-kV offsite source. As such, the ERAT LTC will compensate for reduced margin that has occurred or may occur in the near term (especially during peak summer load demand), with respect to the difference between the voltage required for plant safety loads and the minimum expected offsite voltage. The ERAT LTC also has a significantly higher load capacity, than the current ERAT, thus further enhancing the capability and capacity of the 138-kV offsite source. This increased margin also reduces the probability of a transfer to the diesel generator(s) (that are intended to be an emergency electric power source) in the event of high plant load with low offsite source voltage.

Based on the above, and with respect to voltage requirements for plant loads the proposed ERAT replacement does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days of the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public

and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative 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 6D59, 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 July 6, 1998, 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 Vespasian Warner Public Library, 310 N. Quincy Street, Clinton, IL 61727. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the 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 a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: 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 the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Leah Manning Stetzner, Vice President, General Counsel, and Corporate Secretary, 500 South 27th Street, Decatur, IL 62525, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer, or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated May 20, 1998, 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 Vespasian Warner Public Library, 310 N. Quincy Street, Clinton, IL 61727.

Dated at Rockville, Md., this 28th day of May 1998.

For the Nuclear Regulatory Commission.

Jon B. Hopkins,

Senior Project Manager, Project Directorate III–3, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 98–14776 Filed 6–3–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Nuclear Waste; Renewal Notice

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of renewal of the Advisory Committee on Nuclear Waste for a period of two years.

SUPPLEMENTARY INFORMATION: The Nuclear Regulatory Commission has determined that renewal of the Charter for the Advisory Committee on Nuclear Waste for the two year period commencing on May 29, 1998, is in the public interest in connection with duties imposed on the Commission by law. This action is being taken in accordance with the Federal Advisory Committee Act after consultation with the Committee Management Secretariat, General Services Administration.

The purpose of the Advisory Committee on Nuclear Waste is to provide advice to the U.S. Nuclear Regulatory Commission (NRC) on nuclear waste disposal facilities, as directed by the Commission. This includes 10 CFR parts 60 and 61 and other applicable regulations and legislative mandates. In performing its work, the Committee will examine and report on those areas of concern referred to it by the Commission and may undertake studies and activities on its own initiative, as appropriate. Emphasis will be on protecting the public health and safety in the disposal of nuclear waste. The Committee will interact with representatives of NRC, ACRS, other federal agencies, state and local agencies, Indian Tribes, and private, international and other organizations as appropriate to fulfill its responsibilities.

FOR FURTHER INFORMATION PLEASE CONTACT: John T. Larkins, Executive Director of the Committee, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–7360.

Dated: May 29, 1998.

Andrew L. Bates,

Federal Advisory Committee Management Officer.

[FR Doc. 98–14771 Filed 6–3–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Loss of Reactor Coolant Inventory and Associated Potential for Loss of Emergency Mitigation Functions While in a Shutdown Condition; Issue

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of issuance.

SUMMARY: The Nuclear Regulatory Commission (NRC) has issued Generic Letter (GL) 98–02 to all holders of operating licenses for pressurized-water reactors, except those who have permanently ceased operations and have certified that fuel has been permanently removed from the reactor vessel, to request that addressees (1) assess the susceptibility of their residual heat removal (RHR) and emergency core cooling (ECC) systems to common-cause failure as a result of reactor coolant system (RCS) draindown while in a shutdown condition, and (2) submit certain information, pursuant to § 50.54(f) of Title 10 of the Code of Federal Regulations (10 CFR 50.54(f)), concerning their findings regarding potential pathways for inadvertent RCS drain-down and the suitability of surveillance, maintenance, modification and operating practices and procedures regarding configuration control during reactor shutdown cooling.

The generic letter is available in the NRC Public Document Room under accession number 9805050197.

DATES: The generic letter was issued on May 28, 1998.

ADDRESSEES: Not applicable.

FOR FURTHER INFORMATION CONTACT: Muhammad M. Razzaque, at (301) 415–2882.

SUPPLEMENTARY INFORMATION: This generic letter does not constitute a backfit as defined in 10 CFR 50.109(a)(1) since it does not impose modifications of or additions to structures, systems or components or to design or operation of an addressee's facility. It also does not impose an interpretation of the Commission's rules that is either new or different from a previous staff position. The staff, therefore, has not performed a backfit analysis.

Dated at Rockville, Maryland, this 28th day of May 1998.

For the Nuclear Regulatory Commission.

Jack W. Roe,

Acting Director, Division of Reactor Program Management, Office of Nuclear Reactor Regulation.

[FR Doc. 98–14774 Filed 6–3–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

NRC Incident Response Function Self-Assessment; Public Meeting

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of meeting.

SUMMARY: The NRC staff will solicit public comment regarding the Incident Response Function and suggestions for initiatives that will improve the efficiency and effectiveness of the Incident Response Function.

DATES: June 16, 1998.

TIME: 1 pm–5 pm.

ADDRESSES: 11545 Rockville Pike, Rockville Maryland 20852. Room T–9A1.

FOR FURTHER INFORMATION CONTACT: Stuart Rubin, Office for Analysis and Evaluation of Operational Data, U.S. Nuclear Regulatory Commission, Washington DC 20555, Telephone (301) 415–7477.

SUPPLEMENTARY INFORMATION: In 1995, the NRC conducted a review of NRC's major regulatory functions to identify potential candidate programs for improved efficiency. The review was conducted in connection with the National Performance Review for Reinventing Government (NPR). In all, seven programs were recommended in NRC's NPR task force report, SECY–95–154, as warranting further detailed review for efficiency improvement. One of the programs identified was the Incident Response Program. The Commission responded that the identified programs should be considered as part of the NRC's Strategic Assessment and Rebaselining Initiative. The specific efficiencies identified in SECY–95–154 for the Incident Response Program were considered by the staff and either were implemented or are in the process of being implemented, as appropriate.

In assessing the NRC's Incident Response Function, the NRC's Strategic Assessment and Rebaselining Initiative, the ''related strategic issues'' that will be considered by the Self Assessment are: (1) What measures should NRC take to maintain a sufficient planning and response capability for the Nuclear Industry, State and local authorities, and the Federal Government in the face of growing economic pressure and improving safety performance? (2) Is the degree of NRC incident response capability for materials and fuel facility emergencies consistent with the risk associated with the activities?

The overall goal and primary focus of the Incident Response Function Self-

Assessment is to identify initiatives that will improve the efficiency and effectiveness of the Incident Response Function. The purpose of this meeting is to solicit public comment and input on this subject.

The meeting will be an open forum following a brief introduction by NRC staff. Registration will be conducted before the meeting.

Dated at Rockville, Md., this 28th day of May, 1998.

For the Nuclear Regulatory Commission.

Thomas T. Martin,

Director, Office for Analysis and Evaluation of Operational Data.

[FR Doc. 98–14777 Filed 6–3–98; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–23227; 812–11066]

PIMCO Funds, et al.; Notice of Application

May 29, 1998.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of application for exemption under section 17(b) of the Investment Company Act of 1940 (the ''Act'') from section 17(a) of the Act.

SUMMARY OF APPLICATION: Order requested to permit a certain series of a registered open-end management investment company to acquire all of the assets and assume all of the liabilities of a certain series of another registered open-end management investment company. Because of certain affiliations, applicants may not rely on rule 17a–8 under the Act.

APPLICANTS: PIMCO Funds d/b/a/ PIMCO Funds: Pacific Investment Management Series (''PIMS''), PIMCO Funds: Multi-Manager Series (''MMS''), Pacific Investment Management Company (''PIMCO''), and PIMCO Advisors L.P. (the ''Advisor'').

FILING DATES: The application was filed on March 13, 1998. 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 June 23, 1998, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, 2187 Atlantic Avenue, Stamford, Connecticut 06902.

FOR FURTHER INFORMATION CONTACT: Lawrence W. Pisto, Senior Counsel, at (202) 942–0527, or Edward P. MacDonald, Branch Chief at (202) 942–0564 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth Street, N.W., Washington, D.C. 20549 (tel (202) 942–8090).

Applicants' Representations

1. PIMS, a Massachusetts business trust, is an open-end management investment company registered under the Act. PIMS currently offers twenty-five investment portfolios, one of which is the PIMCO Municipal Bond Fund (the ''Acquiring Fund''). The Acquiring fund has three classes of shares: (1) Class A shares, which are sold subject to a front-end sales charge; (2) Class B shares, which are sold subject to a contingent deferred sales charge; and (3) Class C shares, which are sold subject to an asset-based sales charge.

2. MMS, a Massachusetts business trust, is an open-end management investment company registered under the Act. MMS currently offers 22 investment portfolios, one of which is the Tax Exempt Fund (the ''Acquired Fund,'' together with the Acquiring Fund, the ''Funds''). The Acquired Fund offers three classes of shares, Class A, Class B, and Class C, which are identical to the respective classes of the Acquiring Fund, except that the front-end sales charge for Class A shares of the Acquiring Fund is lower than that for Class A shares of the Acquired Fund, and the Acquiring Fund's distributor has voluntarily waived a portion of the asset-based sales charge for Class C shares.

3. The Advisor, which is registered under the Investment Advisers Act of 1940 (the ''Advisers Act''), serves as investment adviser to the Acquired Fund. A subsidiary of the Adviser, Columbus Circle Investors (''Columbus Circle''), serves as portfolio manager of the Acquired Fund. Columbus Circle is registered under the Advisers Act. PIMCO, which is registered under the Advisers Act, is another subsidiary of the Adviser and serves as investment adviser to the Acquiring Fund. The Acquiring Fund began offering its shares to the public in April 1998, however, PIMCO provided its initial capital and, therefore, currently owns a substantial percentage of its outstanding shares.

4. On February 24, 1998, the board of trustees of PIMS and, on March 5, 1998, the board of trustees of MMS (together, the ''Boards''), including a majority of the disinterested trustees, approved an Agreement and Plan of Reorganization (the ''Plan''). The Plan provides for the transfer (''Reorganization'') of the assets of the Acquired Fund to the Acquiring Fund in exchange for Class A, Class B and Class C shares of the Acquiring Fund (''Merger Shares'') that have an aggregate net asset value equal to the aggregate net asset value of the Class A, Class B, and Class C shares of the Acquired Fund on the date of exchange (the ''Exchange Date''). On the Exchange Date the Acquired Fund will distribute on a *pro rata* basis Merger Shares the value of which will be determined at 4:00 p.m., Eastern Standard Time or such other time as may be agreed upon in writing by the parties. The net asset value of the Merger Shares of the Acquiring Fund will be computed in the manner set forth in the then-current PIMS prospectus. The value of the assets and liabilities of the shares of the Acquired Fund will be determined by the Acquiring Fund, in cooperation with the Acquired Fund, pursuant to the Acquiring Fund's procedures, which are substantially similar to the procedures used by the Acquired Fund in determining the fair market value of its assets and liabilities.

5. No sales charge will be incurred by shareholders of the Acquired Fund in connection with their acquisition of Acquiring Fund shares. Applicants state that the investment objectives, policies and restrictions of the Acquiring Fund are substantially similar to those of the Acquired Fund. The Advisor will bear all costs and expenses of the Reorganization incurred by the Acquiring Fund. The Acquired Fund will bear $24,241 of the costs and expenses it incurs in the Reorganization, with the Advisor bearing all costs and expenses in excess of that amount. The total costs and expenses of the Reorganization are estimated to be approximately $100,000 to $125,000.

6. The Boards determined that the Reorganization is in the best interests of the shareholders of the Funds and that

the current interests of the shareholders of the Funds would not be diluted as a result of the Reorganization. In assessing the Reorganization, the Board of the Acquired Fund considered: (a) Expense ratios and information regarding fees and expenses of the Funds; (b) terms and conditions of the Reorganization, including whether it would result in a dilution of the Acquired Fund's current shareholders; (c) the compatibility of the Acquiring Fund's investment objectives, policies and restrictions with those of the Acquired Fund; (d) the expertise of PIMCO in fixed income investing; (e) the capabilities and resources of PIMCO and its affiliates in the areas of investment management and shareholder servicing; (f) the growth opportunities afforded by the proposed Reorganization; (g) the tax consequences of the Reorganization to the Acquired Fund and its shareholders; and (h) the direct and indirect costs to be incurred by the Acquired Fund or its shareholders.

7. A proxy statement/prospectus describing the Reorganization, filed with the Commission on Form N–14 and declared effective on April 22, 1998, was sent to shareholders of the Acquired Fund in connection with the solicitation of proxies for a special meeting of the shareholders to be held on June 19, 1998.

8. The Reorganization is subject to the following conditions precedent: (a) That the shareholders of the Acquired Fund approved the Plan; (b) that the Funds receive an opinion of tax counsel that the proposed Reorganization will be tax-free for the Funds and their shareholders; (c) that applicants will receive from the SEC an exemption from section 17(a) of the Act for the Reorganization; and (d) if necessary, any approval from the relevant state securities administrator. Applicants agree not to make any material changes to the Reorganization without prior SEC approval.

Applicants' Legal Analysis

1. Section 17(a) of the Act generally prohibits an affiliated person of a registered investment company, or an affiliated person of such a person, acting as principal, from selling any security to, or purchasing any security from the company.

2. Section 2(a)(3) of the Act defines an ''affiliated person of another person'' to include any person directly or indirectly owning, controlling, or holding with power to vote 5% or more of the outstanding voting securities of such other person, and any person directly or indirectly controlling, controlled by or under common control with such other person, and if such other person is an investment company, any investment adviser of that company.

3. Rule 17a–8 under the Act exempts from the prohibitions of section 17(a) mergers, consolidations, or purchases or sales of substantially all of the assets of registered investment companies that are affiliated persons solely by reason of having a common investment adviser, common directors, and/or common officers, provided that certain conditions set forth in the rule are satisfied.

4. Applicants believe that they may not rely on rule 17a–8 in connection with the Reorganization because the Funds may be deemed to be affiliated persons, or affiliated persons of an affiliated person, by reason other than having a common investment adviser, common directors, and/or common officers. The Acquiring Fund began to accept orders for the purchase of its shares beginning in April 1998. Applicants state, however, that PIMCO currently owns a substantial percentage of the Acquiring Fund's outstanding shares, consequently, it is possible that, as of the Exchange Date, PIMCO may own 5% or more, and possibly more than 25% of the outstanding voting securities of the Acquiring Fund.

5. Section 17(b) of the Act provides that the SEC may exempt a transaction from the provisions of section 17(a) if the terms of the proposed transaction, including the consideration to be paid, are reasonable and fair and do not involve overreaching on the part of any person concerned, and that the proposed transaction is consistent with the policy of each registered investment company concerned and with the general purposes of the Act.

6. Applicants submit that the Reorganization satisfies the standards of section 17(b). Applicants believe the terms of the Reorganization are fair and reasonable and do not involve overreaching. Applicants state that the Reorganization will be based on the relative net asset values of the Funds' shares. Applicants also state that the primary investment objective for each Fund is to seek high current income exempt from federal income tax, consistent with preservation of capital;. It is a policy of each Fund that, under normal market conditions, at least 80% of its net assets will be invested in Municipal Bonds. Applicants also state that the Boards, including a majority of the independent trustees, have made the requisite determinations that the participation of the relevant Fund in the proposed Reorganization is in the best interests of the Fund, and that such participation will not dilute the interests of shareholders of the Fund.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–14827 Filed 6–3–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–26880]

Filings Under the Public Utility Holding Company Act of 1935, as amended (''Act'')

May 29, 1998.

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 under the Act. 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 is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by June 23, 1998, to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should 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 June 23, 1998, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

WPS Resources Corporation (70–9179)

WPS Resources Corporation (''WPSR''), 700 North Adams Street, P.O. Box 19001, Green Bay, Wisconsin 54307–9001, an exempt public utility holding company under section 3(a)(1) of the Act, has filed an application under sections 9(a)(2) and 10 of the Act.

WPSR proposes to acquire all of the issued and outstanding voting securities the ''Common Stock'') of Upper

Peninsula Energy Corporation (''UPEN''), an exempt public-utility holding company under section 3(a)(1) of the Act, and its utility subsidiary, Upper Peninsula Power Company (''UPPCo'')

WPSR and UPEN have entered into an Agreement and Plan of Merger, dated as of July 10, 1997, which provides, among other things, for the merger of UPEN with and into WPSR (the ''Merger''). Following the Merger, the separate corporate existence of UPEN will cease, and WPSR will be the surviving corporation. Each share of UPEN Common Stock will be converted into the right to receive 0.9 shares of WPSR Common Stock.

The boards of directors of WPSR and UPEN approved the Merger at meetings held on July 10, 1997. The shareholders of UPEN approved the Merger at a special meeting held on January 29, 1998. WPSR states that shareholder approval of the Merger is not required.

WPSR's principal utility subsidiary, Wisconsin Public Service Corporation (''Public Service''), serves approximately 374,000 electric and 218,000 gas retail customers in northeastern Wisconsin and the southern portion of Michigan's upper peninsula.[1] UPPCo serves approximately 48,000 electric retail customers entirely in Michigan's upper peninsula. The service territories of Public Service and UPPCo are not contiguous, being separated by the service territory of Wisconsin Electric Power Company.

Public Service is subject to the retail ratemaking jurisdiction of both the Public Service Commission of Wisconsin and the Michigan Public Service Commission. UPPCo is also subject to the retail ratemaking jurisdiction of the Public Service Commission of Wisconsin.

WPSR has three direct nonutility subsidiaries, WPS Energy Services, Inc. (''ESI''), WPS Development, Inc. (''PDI''), and WPS Visions, Inc. (''Visions''). ESI offers electric and gas marketing, energy management, project management and energy consulting services to wholesale and retail customers. PDI offers acquisition and investment analysis, project development, engineering, management, operations and maintenance services for the power generation industry. PDI also owns a 66⅔% interest in Mid-American Power LLC, an exempt wholesale generator. Visions serves a business research and development vehicle for WPSR.

In addition, Public Service has two nonutility subsidiaries, Wisconsin Valley Improvement Company (''WV'') and Public Service Leasing, Inc. (''PS Leasing''). WV operates a system of dams and water reservoirs on the Wisconsin River and tributary streams, and charges water tolls to users, primarily power plant owners. PS Leasing is engaged in the financing of specific utility projects.

UPEN has two nonutility subsidiaries, Upper Peninsula Development Company, which holds title to UPPCo's corporate headquarters, and PENVEST, Inc., which explores investment opportunities in telecommunications, engineering services, and other non-regulated businesses.

WPSR states it intends to claim an exemption under rule 2 under the Act following the Merger.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–14825 Filed 6–3–98; 8:45 am]

BILLING CODE 8010–01–M

[1] WPSR also owns, through Public Service, approximately a 33% interest in Wisconsin River Power Company (''WRPC''), which is an electric utility company that sells the output of its generating resources at cost to its owners. The other owners of WRPC are Consolidated Water Power Company and Wisconsin Power & Light Company. WRPC is not subject to the ratemaking jurisdiction of the Public Service Commission of Wisconsin.

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–23226]

Notice of Applications for Deregistration Under Section 8(f) of the Investment Company Act of 1940

May 29, 1998.

The following is a notice of applications for deregistration under section 8(f) of the Investment Company Act of 1940 for the month of May, 1998. A copy of each application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth St., N.W., Washington, DC 20549 (tel. 202–942–8090). An order granting each application will be issued unless the SEC orders a hearing. Interested persons may request a hearing on any application by writing to the SEC's Secretary at the address below and serving the relevant applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on June 23, 1998, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary, SEC, 450 Fifth Street, N.W., Washington, DC 20549. For further information, contact: Diane L. Titus, at (202) 942–0564, SEC, Division of Investment Management, Office of Investment Company Regulation, Mail Stop 5–6, 450 Fifth Street, N.W., Washington, DC 20549.

Farrell Alpha Strategies [File No. 811–9048]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On December 29, 1997, applicant completed a liquidating distribution to its shareholders at net asset value. Expenses incurred in connection with the liquidation were under $5,000 and were paid by applicant's investment adviser, Farrell-Wako Global Investment Management, Inc.

Filing Dates: The application was filed on March 16, 1998, and amended on May 5, 1998.

Applicant's Address: 780 Third Avenue, 38th Floor, New York, New York 10017.

Franklin Templeton Japan Fund [File No. 811–6664]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On March 26, 1998, applicant made a liquidating distribution to its shareholders based on the net assets of applicant. Expenses incurred in connection with the liquidation totaled approximately $49,379, and were borne equally by applicant and Templeton Investment Counsel, Inc., applicant's investment adviser.

Filing Dates: The application was filed on March 31, 1998 and amended on May 1, 1998.

Applicant's Address: 100 Fountain Parkway, P.O. Box 33030, St. Petersburg, Florida 33733–8030.

Panther Partners, L.P. [File No. 811–6559]

Summary: Applicant, a Delaware limited partnership, seeks an order declaring that it has ceased to be an investment company. On June 30, 1997, applicant distributed 97% of the amount in each partner's capital account to each partner in cash or in kind, based on that partner's election. The remaining 3% of each account was distributed in cash to all partners on September 15 and October 1, 1997 upon completion of the fund's final audit.

Expenses incurred in connection with the liquidation were borne by Tiger Management L.L.C., an affiliate of applicant's investment adviser.

Filing Dates: The application was filed on March 25, 1998, and amended on May 11, 1998.

Applicant's Address: 101 Park Avenue, New York, New York 10178.

Merrill Lynch KECALP Growth Investments Limited Partnership 1983 [File No. 811–3389] and Merrill Lynch KECALP L.P. 1984 [File No. 811–3909]

Summary: Each applicant seeks an order declaring that it has ceased to be an investment company. On December 23, 1997, each applicant distributed its assets to its securityholders at the net asset value per share. Expenses of approximately $30,000 are expected to be incurred in connection with each applicant's liquidation and will be borne by KECALP, Inc., the general partner of applicants.

Filing Dates: Each application was filed on February 23, 1998, and amended on April 29, 1998.

Applicants' Address: South Tower, World Financial Center, 225 Liberty Street, New York, New York 10080.

The Laidlaw Covenant Fund [811–7602]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On December 20, 1996, applicant transferred all of its assets and liabilities to Value Fund, a series of The Vintage Funds, based on the relative net asset values per share. Laidlaw Holdings Asset Management, Inc., applicant's investment adviser, incurred expenses in connection with the merger of $25,000, with any expenses exceeding that amount borne by Vintage Advisers, Inc., The Vintage Funds' investment adviser.

Filing Dates: The application was filed on November 18, 1997 and amended on May 14, 1998.

Applicant's Address: 100 Park Avenue, New York, NY 10017.

Allmerica Funds [File No. 811–6308]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On October 31, 1997, applicant made a liquidating distribution to its sole shareholder at net asset value. No expenses were incurred in connection with the liquidation. Applicant retained $9,201 to cover outstanding liabilities relating to advisory fees, printing fees, custody fees and tax services.

Filing Dates: The application was filed on November 12, 1997, and amended on May 19, 1998.

Applicant's Address: 440 Lincoln Street, Worcester, Massachusetts 06153.

Putnam Adjustable Rate U.S. Government Fund [File No. 81–4531]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On November 8, 1996, applicant transferred its assets and liabilities to the Putnam Intermediate U.S. Government Income Fund (''Putnam Intermediate'') based on the relative net asset values per share. Applicant paid approximately $78,604 in expenses related to the reorganization. Putnam Intermediate paid approximately $41,620 in reorganization expenses.

Filing Dates: The application was filed on March 17, 1998 and amended on May 11, 1998.

Applicant's Address: One Post Office Square, Boston, MA 02109.

Consultants Trust [811–7542]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. Applicant abandoned its intention to operate before it received any assets. Applicant never issued securities.

Filing Dates: The application was filed on April 21, 1998 and applicant has agreed to file an amendment during the notice period.

Applicant's Address: 2303 Yorktown Avenue, Lynchburg, Virginia 24501.

Midcap Growth Portfolio [811–7638]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. Applicant has never made a public offering of its securities and does not propose to make a public offering or engage in business of any kind.

Filing Dates: The application was filed on May 11, 1998 and applicant has agreed to file an amendment during the notice period.

Applicant's Address: 777 Mariners Island Blvd., P.O. Box 7777, San Mateo, CA 94403–7777.

John Hancock Sovereign Investors Fund, Inc. [File No. 811–115]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On December 2, 1996, applicant, on behalf of John Hancock Sovereign Investors Fund (the ''Fund''), a series of applicant, transferred all of the Fund's assets and liabilities to John Hancock Sovereign Investors Fund, a series of John Hancock Investment Trust, based on the relative net asset values per share. Applicant bore approximately $266,103 in reorganization expenses. John Hancock Investment Trust bore approximately $307,727 in reorganization expenses.

Filing Dates: The application was filed on October 6, 1997 and amended on May 22, 1998.

Applicant's Address: 101 Huntington Avenue, Boston, MA 02199–7603.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–14826 Filed 6–3–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40041; File No. SR–CBOE–98–15]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc. to Update and Reorganize Its Rules Relating to Designated Primary Market-Makers

May 28, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] is hereby given that on April 22, 1998, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to update and reorganize the Exchange's rules relating to designated primary market-makers (''DPMs''). Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

Chapter III—Membership

* * * * *

Rule 3.27 Membership Options Trading Permits

* * * * *

(c) DPMs. The *DPM trading system described in Section C of Chapter VIII* [Modified Trading System established in Rule 8.80] will be employed in NYSE Options. Each specialist firm to which

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

a Permit is issued pursuant to subparagraph (a)(2) of this Rule shall be appointed as the DPM in the same classes of NYSE Options as those for which it was designated as a specialist on NYSE. Subject to the provisions of the Rules, a Permit holder qualified to act as a DPM pursuant to the Rules shall be appointed to act as the DPM for each class of equity options designated by the Exchange pursuant to the last sentence of paragraph (b) of this Rule. Each specialist firm appointed as a DPM in a class of NYSE Options pursuant to the foregoing two sentences shall, subject to the provisions of the Rules, continue to act as such DPM during the term of the Permits and thereafter so long as it is a regular member or member organization of the Exchange.

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Chapter VI—Doing Business on the Exchange Floor

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Rule 6.8. RAES Operations in Equity Options

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[(a)(iii) This rule shall apply to RAES in classes handled by DPM's except that the MTS Appointments Committee may make available additional series or raise the size of eligible orders in a DPM's classes pursuant to Rule 8.80.]

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Chapter VIII—Market Traders, Trading Crowds and Designated Primary Market-Makers

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Section A: Market-Makers

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Rule 8.3 Appointment of Market Makers

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[Interpretations and Policies: .01 The Exchange has adopted the policy that no Market-Maker may act as an independent Market-Maker in a class of options for which the Market-Maker has been approved to act as a DPM.]

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Rule 8.7. Obligations of Market-Makers

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* * * Interpretations and Policies:

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.07 Market-Makers are expected to participate in and support Exchange sponsored automated programs, or approved equivalents, including but not limited to the Retail Automatic Execution System and Auto Quote. The variables in the formula used in each trading crowd to generate automatically updated market quotations shall be as agreed upon by the respective trading crowds. For those classes in which a DPM has been appointed, this responsibility shall be primarily assigned to the DPM pursuant to Rule *8.85(a)(viii).* The DPM shall disclose to the other members trading at the same trading station the following components of the formula used to generate automatically updated market quotations at that station: option pricing calculation model, volatility, interest rate, dividend, and what is used to represent the value of the underlying; provided however, that the MTS Committee shall have the discretion to exempt DPMs using proprietary automated quotation updating systems from having to disclose proprietary information concerning the formulas used by those systems.

* * * * *

Rule 8.16 RAES Eligibility in Option Classes Other Than DJX

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(a)(ii) The Market-Maker may designate that his trades be assigned to and clear into either this individual account or a joint account in which he is a participant. Each individual member of the joint must be physically present in the trading crowd while that member is signed onto RAES and each joint account member is subject to all of the following provisions of this rule. [DPM participation shall also be governed by the MTS Committee as provided in Rule 8.80.]

* * * * *

Section C: Designation Primary Market-Makers

DPM Defined

Rule 8.80. A ''Designated Primary Market-Maker'' or ''DPM'' is a member organization that is approved by the Exchange to function in allocated securities as a Market-Maker (as defined in Rule 8.1), as Floor Broker (as defined in Rule 6.70, and as an Order Book Official (as defined in Rule 7.1). Determinations concerning whether to grant or withdraw the approval to act as a DPM are made by the Modified Trading System Appointment Committee (''MTS Committee'') in accordance with Rules 8.83 and 8.90. DPMs are allocated securities by the Allocation Committee and the Special Product Assignment Committee in accordance with Rule 8.95.

DPM Designees

Rule 8.81. (a) A DPM may act as a DPM soley through its DPM Designees. A ''DPM Designee'' is an individual who is approved by the MTC Committee to represent a DPM in its capacity as a DPM. The MTS Committee may subclassify DPM Designees and require that certain DPM Designees be subject to specified supervision and/or be limited in their authority to represent a DPM.

(b) Notwithstanding any other rules to the contrary, an individual must satisfy the following requirements in order to be a DPM Designee of a DPM:

(i) the individual must be a member of the Exchange:

(ii) the individual must be a nominee of the DPM or of an affiliate of the DPM or must own a membership that has been registered for the DPM or for an affiliate of the DPM;

(iii) the individual must be registered as a Market-Maker pursuant to Rule 8.2 and as a Floor Broker pursuant to Rule 6.71;

(iv) on such form or forms as the Exchange may prescribe the DPM must authorize the individual to enter into Exchange transactions on behalf of the DPM in its capacity as a DPM, must authorize the individual to represent the DPM in all matters relating to the fulfillment of the DPM's responsibilities as a DPM, and must guaranty all obligations arising out of the individual's representation of the DPM in its capacity as a DPM in all matters relating to the Exchange; and

(v) the individual must be approved by the MTS Committee to represent the DPM in its capacity as a DPM.

The approval of an individual to act as a DPM Designee shall expire in the event the individual does not have trading privileges on the Exchange for a six month time period.

(c) Each DPM shall have at least two DPM Designees who are nominees of the DPM or who own a membership that has been registered for the DPM.

(d) A DPM Designee of a DPM may not trade as a Market-Maker or Floor Broker in securities allocated to the DPM unless the DPM Designee is acting on behalf of the DPM in its capacity as a DPM. When acting on behalf of a DPM in its capacity as a DPM, a DPM Designee is exempt from the provisions of Rule 8.8.

MTS Committee

Rule 8.82. (a) The MTS Committee shall consist of the Vice-Chairman of the Exchange, the Chairman of the Market Performance Committee, and nine members elected by the membership of the Exchange.

(b) The nine elected MTS Committee members shall include: four members whose primary business is as a Market-Maker, two members whose primary business is as a Market-Maker or as a DPM Designee, one member whose primary business is as a Floor Broker and who is not associated with a

member organization that conducts a public customer business, and two persons associated with member organizations that conduct a public customer business. No more than two of the nine elected MTS Committee members may be associated with a DPM. The nine elected MTS Committee members shall have three-year terms, three of which shall expire each year.

(c) The election procedures for the nine elected MTS Committee members shall be the same as the election procedures for elected Directors that are set forth in Article IV and Article V of the Exchange Constitution. Accordingly, the following shall occur as part of these procedures: During October of each year, the Nominating Committee shall select nominees to fill expiring terms and vacancies on the MTS Committee. Nominations may also be made by petition, signed by not less than 100 members and filed with the Secretary of the Exchange no later than 5:00 p.m. (Chicago time) on November 15, or the first business day thereafter in the event November 15 occurs on a holiday or a weekend. The election to fill the expiring terms and vacancies on the MTS Committee shall be held as part of the annual election.

Approval to Act as a DPM

Rule 8.83. (a) A member organization desiring to be approved to act as a DPM shall file an application with the Exchange on such form or forms as the Exchange may prescribe.

(b) The MTS Committee shall determine the appropriate number of approved DPMs. Each DPM approval shall be made by the MTS Committee from among the DPM applications on file with the Exchange, based on the MTS Committee's judgment as to which applicant is best able to perform the functions of a DPM. Factors to be considered in making such a selection may include, but are not limited to, any one or more of the following:

(i) adequacy of capital;

(ii) operational capacity;

(iii) trading experience of and observance of generally accepted standards of conduct by the applicant, its associated persons, and the DPM Designees who will represent the applicant in its capacity as a DPM;

(iv) number and experience of support personnel of the applicant who will be performing functions related to the applicant's DPM business;

(v) regulatory history of and history of adherence to Exchange Rules by the applicant, its associated persons, and the DPM Designees who will represent the applicant in its capacity as a DPM;

(vi) willingness and ability of the applicant to promote the Exchange as a marketplace;

(vii) performance evaluations conducted pursuant to Rule 8.60; and

(viii) in the event that one or more shareholders, directors, officers, partners, managers, members, DPM Designees, or other principals of an applicant is or has previously been a shareholder, director, officer, partner, manager, member, DPM Designee, or other principal in another DPM, adherence by such DPM to the requirements set forth in this Section C of Chapter VIII respecting DPM responsibilities and obligations during the time period in which such person(s) held such position(s) with the DPM.

(c) Each applicant for approval as a DPM will be given an opportunity to present any matter which it wishes the MTS Committee to consider in conjunction with the approval decision. The MTS Committee may require that a presentation be solely or partially in writing, and may require the submission of additional information from the applicant or individuals associated with the applicant. Formal rules of evidence shall not apply to these proceedings.

(d) In selecting an applicant for approval as a DPM, the MTS Committee may place one or more conditions on the approval, including, but not limited to, conditions concerning the capital, operations, or personnel of the applicant and the number or type of securities which may be allocated to the applicant.

(e) Each DPM shall retain its approval to act as a DPM until it resigns as a DPM or its approval is terminated by the MTS Committee pursuant to Rule 8.90.

(f) If a member organization resigns as a DPM or if pursuant to Rule 8.90 the MTS Committee terminates or otherwise limits its approval to act as a DPM, the MTS Committee shall have the discretion to do one or both of the following:

(i) approve an interim DPM, pending the final approval of a new DPM pursuant to paragraphs (a) through (d) of this Rule; and

(ii) allocate on an interim basis to another DPM or to other DPMs the securities that were allocated to the affected DPM, pending a final allocation of such securities pursuant to Rule 8.95.

Nether an interim approval or allocation made pursuant to this paragraph (f) should be viewed as a prejudgment with respect to the final approval or allocation.

Conditions on the Allocation of Securities to DPMs

Rule 8.84. (a) The MTS Committee may establish (i) restrictions applicable to all DPMs on the concentration of securities allocable to a single DPM and (ii) minimum eligibility standards applicable to all DPMs which must be satisfied in order for a DPM to receive allocations of securities, including but not limited to standards relating to adequacy of capital and number of personnel.

(b) The MTS Committee has the authority under other Exchange rules to restrict the ability of particular DPMs to receive allocations of securities, including but not limited to, Rules 8.88(b) and 8.60, Rule 8.83(d), and Rule 8.90.

DPM Obligations

Rule 8.85. (a) Dealer Transactions. Each DPM shall fulfill all of the obligations of a Market-Maker under the Rules, and shall satisfy each of the following requirements, in respect of each of the securities allocated to the DPM:

(i) assure that disseminated market quotations are accurate;

(ii) assure that each displayed market quotation is honored for at least the number of contracts prescribed pursuant to Rule 8.51;

(iii) in the case of option contracts, comply with the bid/ask differential requirements of Rule 8.7(b)(iv);

(iv) assure that the number of DPM Designees and support personnel continuously present at the trading station throughout every business day is not less than the minimum required by the MTS Committee;

(v) trade in all securities allocated to the DPM only in the capacity of a DPM and not in any other capacity;

(vi) segregate in a manner prescribed by the MTS Committee (A) all transactions consummated by the DPM in securities allocated to the DPM and (B) any other transactions consummated by or on behalf of the DPM that are related to the DPM's DPM business;

(vii) participate at all times in any Exchange sponsored automated order handling system, including the Retail Automatic Execution System (RAES); and

(viii) determine a formula for generating automatically updated market quotations and disclose the following components of the formula to the other members trading at the trading station at which the formula is used; option pricing calculation model, volatility, interest rate, dividend, and what is used to represent the price of the underlying.

Notwithstanding the provisions of subparagraph (a)(viii) of this Rule, the MTS Committee shall have the discretion to exempt DPMs using proprietary automated quotation updating systems from having to disclose proprietary information concerning the formulas used by those systems. In addition, to the extent that there is any inconsistency between the specific obligations of a DPM set forth in subparagraphs (a)(i) through (a)(viii) of this Rule and the general obligations of a Market-Maker under the Rules, subparagraphs (a)(i) through (a)(viii) of this Rule shall govern.

(b) Agency Transactions. Each DPM shall fulfill all of the obligations of a Floor Broker (to the extent that the DPM acts as a Floor Broker) and of an Order Book Official under the Rules, and shall satisfy each of the following requirements, in respect of each of the securities allocated to the DPM:

(i) place in the public order book any order in the possession of the DPM which is eligible for entry into the book unless (A) the DPM executes the order upon its receipt or (B) the customer who placed the order has requested that the order not be booked, and upon receipt of the order, the DPM announces in public outcry the information concerning the order that would be displayed if the order were a displayed order in the public order book;

(ii) not remove from the public order book any order placed in the book unless (A) the order is canceled, expires, or is executed or (B) the DPM returns the order to the member that placed the order with the DPM in response to a request from that member to return the order;

(iii) accord priority to any order which the DPM represents as agent over the DPM's principal transactions, unless the customer who placed the order has consented to not being accorded such priority;

(iv) not charge any brokerage commission with respect to the execution of any order for which the DPM has acted as both agent and principal, unless the customer who placed the order has consented to paying a brokerage commission to the DPM with respect to the DPM's execution of the order while acting as both agent and principal;

(v) act as a Floor Broker to the extent required by the MTS Committee; and

(vi) not represent discretionary orders as a Floor Broker or otherwise.

Notwithstanding the provisions of subparagraph (b)(vi) of this Rule, the MTS Committee shall have the discretion to authorize a DPM, on a temporary basis, to accept and represent types of order in one or more of the securities allocated to the DPM which vest the DPM with limited discretion, if the MTS Committee determines that unusual circumstances are present and that the acceptance and representation of such orders by the DPM is necessary in order to assure that there will be adequate representation in such securities of those types of orders. In addition, to the extent that there is any inconsistency between the specific obligations of a DPM set forth in subparagraphs (b)(i) through (b)(vi) of this Rule and the general obligations of a Floor Broker or of an Order Book Official under the Rules, subparagraphs (b)(i) through (b)(vi) of this Rule shall govern.

(c) Other obligations. In addition to the obligations described in paragraphs (a) and (b) of this Rule, a DPM shall fulfill each of the following obligations;

(i) resolve disputes relating to transactions in the securities allocated to the DPM, subject to Floor Official review, upon the request of any party to the dispute;

(ii) promote the Exchange as a marketplace, including meeting and educating market participants, maintaining communications with member firms in order to be responsive to suggestions and complaints, and performing other like activities;

(iii) act to increase the Exchange's order flow in the securities which are allocated to the DPM and respond to competitive developments by improving market quality and service and otherwise acting to increase the Exchange's market share in those securities;

(iv) promptly inform the MTS Committee of any desired change in the DPM Designees who represent the DPM in its capacity as a DPM and of any material change in the financial or operational condition of the DPM; and

(v) supervise all persons associated with the DPM to assure compliance with the Rules.

(d) Obligations of DPM Associated Persons. Each person associated with a DPM shall be obligated to comply with the provisions of this Rule when acting on behalf of the DPM.

** * * Interpretations and Policies: .01 The Exchange may make personnel available to assist a DPM in the DPM's performance of the obligations of an Order Book Official, for which the Exchange may charge the DPM a reasonable fee.*

DPM Financial Requirements

Rule 8.86. Each DPM shall maintain (i) net liquidating equity in its DPM account of not less than $100,000, and in conformity with such guidelines as the MTS Committee may establish from time to time, and (ii) net capital sufficient to comply with the requirements of Exchange Act Rule 15c3–1. Each DPM which is a Clearing Member shall also maintain net capital sufficient to comply with the requirements of the Clearing Corporation.

Participation Entitlement of DPMs

Rule 8.87. (a) Subject to the review of the Board of Directors, the MTS Committee may establish from time to time a participation entitlement formula that is applicable to all DPMs.

(b) To the extent established pursuant to paragraph (a) of this Rule, each DPM shall have a right to participate for its own account with the Market-Makers present in the trading crowd in transactions in securities allocated to the DPM that occur at the DPM's previously established principal bid or offer.

Review of DPM Operations and Performance

Rule 8.88. (a) The MTS Committee or a subcommittee of the MTS Committee may conduct a review of a DPM's operations or performance at any time and at a minimum shall conduct a review of each DPM's operations and performance on an annual basis. A DPM and its associated persons shall submit to the MTS Committee such information requested by the Committee in connection with a review of the DPM's operations or performance.

(b) The MTS Committee shall perform the market performance evaluation and remedial action functions set forth in Rule 8.60 with respect to DMPs and the Market-Makers that trade at DPM trading stations. The MTS Committee may combine a review conducted pursuant to paragraph (a) of this Rule with an evaluation conducted pursuant to Rule 8.60.

(c) Members of the MTS Committee may perform the functions of a Floor Official at DPM trading stations.

Transfer of DPM Appointments

Rule 8.89. (a) A DPM proposing any sale, transfer, or assignment of any ownership interest or any change in its capital structure, voting authority, or distribution of profits or losses shall give not less than thirty (30) days prior written notice thereof to the MTS Committee. No such transaction that is deemed to involve the transfer of a DPM appointment within the meaning of paragraph (b) of this Rule may take place unless (i) the transferee is qualified to act as a DPM in accordance

with the Rules, and (ii) the transaction has received the prior approval of the MTS Committee.

(b) For purposes of this Rule 8.89, the following transactions are deemed to involve the transfer of a DPM appointment: (i) any sale, transfer, or assignment of any significant share of the ownership of a DPM; (ii) any change or transfer of control of a DPM; (iii) any merger, sale of assets, or other business combination or reorganization of a DPM. A sale, transfer, or assignment of a five percent (5%) or more interest in the equity or profits or losses of a DPM (or any series or smaller changes that in the aggregate amount to a change of five percent or more) shall be deemed to be a sale, transfer, or assignment of a significant share of the ownership of the DPM; provided, however, that any sale, transfer, or assignment of a less than five percent interest may also be found by the MTS Committee to represent a significant share of the ownership of a DPM depending on the surrounding facts and circumstances, in which event the MTS Committee shall notify the DPM within fifteen (15) days after receiving notice thereof that the approval of the transaction by the MTS Committee is required.

(c) An application for the approval of a transaction deemed to involve the transfer of a DMP appointment shall be submitted in writing to the MTS Committee at least thirty (30) days prior to the proposed effective date of the transaction, unless the MTS Committee approves a shorter period for its review. The application shall contain a full and complete description of the proposed transaction, including (i) the identity of the transferee, (ii) a description of the transferee's ownership and capital structure, (iii) the identity of those persons who will be the partners, shareholders, directors, officers, and other managers or affiliates of the transferee, as well as those persons who will be responsible for performing the duties of the DPM following the transfer, (iv) the terms of the transaction including the consideration proposed to be paid by the transferee, (v) the terms of any other business relationships between the parties to the transaction, and (vi) any other material information pertaining to the transaction that the MTS Committee may request.

(d) Promptly after receipt of a completed application for the approval of a proposed transfer of a DPM appointment, the MTS Committee shall post notice of the proposed transfer on the Exchange Bulletin Board and in the Exchange Bulletin. The MTS Committee shall not ordinarily consider a proposed transfer sooner than ten (10) days following the day notice is posted on the Bulletin Board, unless the MTS Committee finds it necessary to give earlier consideration to the matter in the interest of the maintenance of fair and orderly markets and the protection of investors. During this period, the MTS Committee will accept written comments on the proposed transfer from any member, and will accept written proposals from other members or from Market-Maker crowds who wish to be considered for appointment in some or all of the classes that are the subject of the proposed transfer.

(e) No application shall be finally approved by the MTS Committee until it is accompanied by complete and final documents pertaining to the transfer (all corporate or partnership documents and amendments thereto, voting trust, ''buy-sell'' or similar agreements, employment agreements, pro forma financial statements), except as the MTS Committee may agree to defer the delivery of specific documents for good cause shown. In considering the approval of a proposed transfer of a DPM appointment, the MTS Committee shall give due consideration to all relevant facts and circumstances, including but not limited to each of the following factors, if applicable; (i) the financial and operational capacity of the transferee; (ii) continuity of control, management, and persons responsible for the operation of the DPM; (iii) avoiding undue concentration of DPM appointments on the Exchange; (iv) available alternatives for reallocating the DPM's appointment taking into account comments made and alternatives proposed by other members during the posting period; and (v) the best interests of the Exchange. If the proposed transferee is not approved to act as a DPM at the time the application is considered by the MTS Committee, the approval of the transfer may be made contingent on the transferee's being so approved within a stated period of time.

(f) The approval or failure to approve a proposed transfer of a DPM appointment is subject to direct review by the Board of Directors upon receipt by the Secretary of the Exchange, within ten (10) days of the time the decision of the MTS Committee is announced, of (i) a written request for such review made by the applicant, specifying why the applicant believes the decision of the Committee should be reversed or modified (in the case of a failure to approve an application as submitted) or (ii) a request for review made by at least five Directors of the Exchange (in any case).

** * * Interpretations and Policies: .01 For purposes of paragraph (b) of this Rule, a transfer of an interest in the profits (but not the ownership) of a DPM to an associated person of the DPM solely as compensation for the associated person's services in support of the business of the DPM shall not ordinarily be deemed to be a sale, transfer, or assignment of a significant share of the ownership of the DPM.*

Termination, Conditioning, or Limiting Approval to Act as a DPM

Rule 8.90. (a) The MTS Committee may terminate, place conditions upon, or otherwise limit a member organization's approval to act as a DPM under any one or more of the following circumstances:

(i) if the member organization incurs a material financial, operational, or personnel change;

(ii) if the member organization fails to comply with any of the requirements under this Section C of Chapter VIII, including, but not limited to, any conditions imposed under Rule 8.83(d), Rule 8.84(a)(ii), or this Rule; or

(iii) if for any reason the member organization should no longer be eligible for approval to act as a DPM or to be allocated a particular security or securities.

Before the MTS Committee takes action to terminate, condition, or otherwise limit a member organization's approval to act as a DPM, the member organization will be given notice of such possible action and an opportunity to present any matter which it wishes the MTS Committee to consider in determining whether to take such action. Such proceedings shall be conducted in the same manner as MTS Committee proceedings concerning DPM approvals which are governed by Rule 8.82(c).

(b) Notwithstanding the provisions of paragraph (a) of this Rule, the MTS Committee has the authority to immediately terminate, condition, or otherwise limit a member organization's approval to act as a DPM if it incurs a material financial, operational, or personnel change warranting such action or if the member organization fails to comply with any of the financial requirements of Rule 8.86.

(c) Limiting a member organization's approval to act as a DPM may include, among other things, limiting or withdrawing the member organization's DPM participation entitlement provided for under Rule 8.87, withdrawing the right of the member organization to act in the capacity of a DPM in a particular security or securities which have been allocated to the member organization,

and/or requiring the relocation of the member organization's DPM operation on the Exchange's trading floor.

(d) If a member organization's approval to act as a DPM is terminated, conditioned, or otherwise limited by the MTS Committee pursuant to this Rule, the member organization may seek review of that decision under Chapter XIX of the Rules.

Limitations on Dealings of DPMs and Affiliated Persons of DPMs

Rule 8.91. (a) No person or entity affiliated with a DPM shall purchase or sell on the Exchange, for any account in which such person or entity has a direct or indirect interest, any security which is allocated to the DPM. Any such person or entity may, however, reduce or liquidate an existing position in a security which is allocated to an affiliated DPM provided that any order to consummate such a transaction is (i) identified as being for an account in which such person or entity has a direct or indirect interest, (ii) approved for execution by a Floor Official, and (iii) executed by the DPM in a manner reasonably calculated to contribute to the maintenance of price continuity with reasonable depth. No order entered pursuant to this paragraph (a) shall be given priority over, or parity with, any order represented in the market at the same price. This paragraph (a) shall not apply to a DPM Designee of a DPM acting on behalf of the DPM in its capacity as a DPM.

(b) Neither a DPM for an equity option, nor any member affiliated with the DPM, shall engage in any material business transaction with the issuer of the security that underlies the equity option or with any officer, director, or 10% shareholder of the issuer of the security. Neither a DPM for a security traded pursuant to Chapter XXX, nor any member affiliated with the DPM, shall engage in any material business transaction with the issuer of the security or with any officer, director, or 10% shareholder of the issuer of the security. For the purposes of this paragraph (b), a material business transaction shall be deemed to be a transaction which is material in value either to the issuer or the DPM, would provide access to material non-public information relating to the issuer, or would give rise to a control relationship between the issuer and the DPM. Notwithstanding the foregoing, the receipt of routine business services, goods, materials, or insurance, on terms that would be generally available shall not be deemed a material business transaction for the purposes of this paragraph (b).

(c) Neither a DPM for an equity option, nor any member affiliated with the DPM, shall accept any orders from the issuer of the security that underlies the equity option or directly from any officer, director, or 10% shareholder of the issuer of the security. Neither a DPM for a security traded pursuant to Chapter XXX, nor any member affiliated with the DPM, shall accept any orders directly from the issuer of the security or directly from any officer, director, or 10% shareholder of the issuer of the security.

(d) Paragraphs (a), (b), and (c) of this Rule shall not apply to any member affiliated with a DPM that has established and obtained Exchange approval of procedures restricting the flow of material non-public corporate and market information (i.e., a ''Chinese Wall'') between such member on the one hand and the DPM and persons affiliated with the DPM on the other hand. Any such procedures shall comply with the following Guidelines:

Guidelines for Exemptive Relief Under Rule 8.91(d) for Members Affiliated with DPMs

These Guidelines set forth the steps that a member affiliated with a DPM must undertake, at a minimum, to seek to obtain an exemption under Rule 8.91(d) from the requirements of paragraphs (a) through (c) of Rule 8.91. These Guidelines may be supplemented or modified by the Exchange in individual cases when the Exchange deems it appropriate to do so.

(a) Generally, an affiliated member seeking a Rule 8.91(d) exemption should establish its operational structure along the lines discussed below.

(i) The affiliated member and the DPM must be organized as separate and distinct organizations. At a minimum, the two organizations must maintain separate and distinct books, records, and accounts and satisfy separately all applicable financial and capital requirements. While the Exchange will permit the affiliated member and the DPM to be under common management, in no instance may persons on the affiliated member's side of the ''Wall'' exercise influence over or control the DPM's conduct with respect to particular securities or vice versa. Any general managerial oversight must not conflict with or compromise in any way the DPM's market-making responsibilities pursuant to the Rules.

(ii) The affiliated member and the DPM must establish procedures designed to prevent the use of material non-public corporate or market information in the possession of the affiliated member to influence the DPM's conduct and to avoid the misuse of DPM market information to influence the affiliated member's conduct. Specifically, the affiliated member and the DPM must ensure that material non-public corporate information relating to trading positions taken by the affiliated member in a DPM security are not made available to the DPM or to any shareholder, director, officer, partner, manager, member, principal, DPM Designee, or employee associated therewith; that no trading is done by the DPM while in possession of non-public corporate information derived by the affiliated member from any transaction or relationship with the issuer or any other person in possession of such information; that advantage is not taken of knowledge of pending transactions or the affiliated member's recommendations; and that all information pertaining to positions taken or to be taken by the DPM and to the DPM's ''book'' in a DPM security is kept confidential and is not made available to the affiliated member except to the extent that such information is made available to the affiliated member in accordance with subparagraph (b)(iii) of these Guidelines.

(b) An affiliated member seeking a Rule 8.91(d) exemption shall submit to the Exchange a written statement which shall set forth:

(i) The manner in which the affiliated member intends to satisfy each of the conditions stated in subparagraphs (a)(i) and (a)(ii) of these Guidelines, and the compliance and audit procedures the affiliated member proposes to implement to ensure that the functional separation is maintained between the affiliated member and the DPM;

(ii) The designation and identification of the individuals associated with the affiliated member responsible for maintenance and surveillance of such procedures;

(iii) That the DPM shall make available to the affiliated member only the sort of market information that the DPM would make available in the normal course of its DPM activity to any other member; that the DPM shall only make such information available to the affiliated member in the same manner that it is made available to any other member; and that the DPM shall only make such information available to the affiliated member pursuant to a request by the affiliated member for such information;

(iv) That where the affiliated member ''popularizes'' a security in which the DPM acts as DPM the affiliated member shall disclose that an associated DPM

makes a market in the security, may have a position in the security, and may be on the opposite side of public orders executed on the Exchange in the security; and that the affiliated member shall forward to the Exchange, immediately after its issuance, a copy of any research report or written recommendation which ''popularizes'' a security in which the DPM acts as DPM;

(v) That the affiliated member shall file with the Exchange such information and reports as the Exchange may, from time to time, require relating to its transactions in a security in which the DPM acts as DPM;

(vi) That the affiliated member shall take appropriate remedial action against any person violating these Guidelines and/or the affiliated member's internal compliance and audit procedures adopted pursuant to subparagraph (b)(i) of these Guidelines, and that the affiliated member and the DPM each recognizes that the Exchange may take appropriate remedial action, including (without limitation) removal of securities from the DPM and/or revocation of the Rule 8.91(d) exemption, in the event of such a violation;

(vii) Whether the affiliated member intends to clear proprietary trades of the DPM and, if so, the procedures established to ensure that information with respect to such clearing activities will not be used to compromise the affiliated member's ''Chinese Wall'' (the procedures followed shall, at a minimum, be the same as those used by the affiliated member to clear for unaffiliated third parties); and

(viii) That no individual associated with the affiliated member shall trade on the Exchange as a Market-Maker in any security in which the DPM acts as DPM.

(Any written statements submitted pursuant to this paragraph (b) shall be collectively referred to herein as the ''Exemption Request''.

(c) In the event that, notwithstanding the procedures established pursuant to these Guidelines, any DPM Designee of a DPM becomes aware of the fact that the Designee has received from the affiliated member any material non-public corporate or market information relating to any of the DPM securities, the DPM Designee shall promptly communicate that fact and disclose the information so received to the person associated with the affiliated member responsible for compliance with securities laws and regulations (the compliance officer) and shall seek a determination from the compliance officer as to whether the DPM Designee should, as a consequence of the Designee's receipt of such information, give up the DPM Designee's appointment as a DPM Designee in the security involved. If the compliance officer determines that the DPM Designee should give up the Designee's appointment as a DPM Designee, the DPM Designee shall, at a minimum, give the appointment up to another DPM Designee who is not in possession of the information so received. In any such event, the compliance officer shall determine when it is appropriate for the DPM Designee to recover the Designee's appointment as a DPM Designee and recommence acting as DPM Designee in the security involved. Procedures shall be established by the affiliated member to assure that in any instance when the compliance officer determines that a DPM Designee should give up the Designee's appointment as a DPM Designee, such transfer is effected in a manner which will prevent the market sensitive information from being disclosed to the remaining DPM Designees.

The compliance officer shall keep a written record of each request received from a DPM Designee for a determination as referred to above. Such record shall be adequate to record the pertinent facts and shall include, at a minimum, the identification of the security, the date, a description of the information received by the DPM Designee, the determination made by the compliance officer, and the basis therefor. If the appointment is given up, the record shall also set forth the time at which the DPM Designee reacquired the appointment and the basis upon which the compliance officer determined that such reacquisition was appropriate. The Exchange shall be given prompt notice of any instance when the compliance officer determines that a DPM Designee should give up the DPM Designee's appointment and also of the determination that the DPM Designee should be permitted to reacquire the appointment. In accordance with such schedules as the Exchange shall from time to time prescribe (at least monthly), the written record of all requests received by the compliance officer from DPM Designees for a determination as referred to above shall be furnished to the Exchange for its review. Members are cautioned that any trading by any person while in possession of material non-public information received as a result of any breach of the internal controls required by these Guidelines may violate Exchange Act Rule 10b–5, Exchange Act Rule 14e–3, just and equitable principles of trade, or one or more other provisions of the Exchange Act, regulations thereunder, or Rules of the Exchange. The Exchange intends to review carefully any such trading of which it becomes aware to determine whether any such violation has occurred.

(d) Subparagraph (b)(vii) of these Guidelines permits an affiliated member to clear the DPM transactions of the DPM provided that the affiliated member establishes procedures to ensure that information with respect to such clearing activities will not be used to compromise the affiliated member's ''Chinese Wall.'' Such procedures should provide that any information pertaining to security positions and trading activities of the DPM, and information derived from any clearing and margin financing arrangements between the affiliated member and the DPM, may be made available only to those (other than employees actually performing clearing and margin financing functions) associated with the affiliated member that are in senior management positions and are involved in exercising general managerial oversight over the DPM. Generally, such information may be made available only to the affiliated member's chief executive officer, chief operations officer, chief financial officer, and senior officer responsible for managerial oversight of the DPM, and only for the purpose of exercising permitted managerial oversight. Such information may not be made available to anyone actually engaged in making day-to-day trading decisions for the affiliated member, or in making recommendations to the customers or potential customers of the affiliated member. Any margin financing arrangements must be sufficiently flexible so as not to limit the ability of the DPM to meet market-making or other obligations under Exchange Rules.

(e) The Exemption Request shall detail the internal controls which both the affiliated member and the DPM intend to adopt to satisfy each of the conditions stated in paragraphs (b)(i) through (b)(viii) of these Guidelines, and the compliance and the audit procedures they propose to implement to ensure that the internal controls are maintained. If the Exchange determines that the organizational structure and the compliance and audit procedures proposed by the affiliated member and the DPM are acceptable under these Guidelines, the Exchange shall so inform the affiliated member and the DPM, in writing, at which point a Rule 8.91(d) exemption shall be granted with or without conditions. Absent such prior written Exchange approval, an

exemption shall not be available. The Exemption Request should identify the individuals associated with the affiliated member that are in senior management positions (and their titles/levels of responsibility) to whom information concerning the DPM trading activities and security positions, and information concerning clearing and margin financing arrangements, is to be made available, the purpose for which the information is to be made available, the frequency with which the information is to be made available, and the format in which the information is to be made available. If any shareholder, director, officer, partner, manager, member, principal, or employee of the affiliated member intends to serve in any such capacity with the DPM, or vice versa, the written statement must include a statement of the duties of the particular individual at both entities, and why it is necessary for such individual to be a shareholder, director, officer, partner, manager, member, principal, or employee of both entities. The Exchange will grant approval for service at both entities only if the dual affiliation is for overall management control purposes or for administrative and support purposes. Dual affiliation will not be permitted for an individual who intends to be active in the day-to-day business operations of both entities. Nothing in the foregoing, however, shall preclude an employee of one entity who performs strictly administrative or support functions (such as facilities, accounting, data processing, personnel, or similar types of functions) from performing similar functions on behalf of the other entity, provided that such individual is clearly identified, and the functions performed on behalf of each entity are specified in the Exemption Request, and all requirements in paragraph (a) of these Guidelines as to maintaining the confidentiality of information are satisfied.

(f) In the event that the Exchange grants a Rule 8.91(d) exemption to an affiliated member: (i) the affiliated member and DPM shall abide by any representations and undertakings set forth in the Exemption Request and shall comply with any conditions placed by the Exchange upon the grant of such exemption; (ii) the affiliated member shall promptly notify the Exchange in writing in the event that any of the information set forth in the Exemption Request changes or becomes inaccurate; and (iii) the Exchange may amend or revoke its grant of exemptive relief pursuant to Rule 8.91(d) in the event that there is a change in the policies, procedures, or organizational structure of the affiliated member or DPM or in any of the information set forth in the Exemption Request.

[Modified Trading System

Rule 8.80. (a) Deleted [insert date of effectiveness of SR–CBOE–98–03]. (See Rule 8.95.)

(b) The MTS Designated Primary Market-Makers (''DPM'') shall be selected and removed as follows:

(1) the selection and removal of DPMs will be conducted by the MTS Appointments Committee (''MTS Committee'' or ''Committee''). The Committee will consist of the Vice-Chairman of the Exchange, the Chairman of the Market Performance Committee, and nine other members, to be nominated by the Nominating Committee and appointed by the Board, whose business functions are as follows: Six market-makers, one floor broker not associated with a member organization that conducts a public customer business, and two persons associated with member organizations that conduct a public customer business. The nine appointed committee members shall have two year terms four or five of which will expire each year.

(2) Any regular member or member organization is eligible for appointment as a DPM. The MTS Committee will select that candidate who appears best able to perform the functions of DPM in the designated options class or classes. Factors to be considered for selection include the following: adequacy of capital, experience with trading the option class or a similar option class, willingness to promote the Exchange as a marketplace, operational capacity, support personnel, history of adherence to Exchange rules and to all criteria specified in this Rule as DPM responsibilities, and trading crowd evaluations under Rule 8.60.

(3) Applications for DPM appointment by member organizations shall include the name of specified nominees. The MTS Committee shall specify whether a DPM appointment is as an individual, or as a member organization. The Committee may also specify any one or more conditions on the appointment, in respect of any representations made in the application process, including but not limited to capital, operations, or personnel. The DPM is obligated promptly to inform the Committee of any material change in financial or operational condition, or in personnel. The appointment may not be transferred without approval of the MTS Committee. The DPM shall serve until he is relieved of his obligations by the Committee.

(4) The MTS Committee may, in its discretion, open an option class or classes to a new DPM selection process under any of the following circumstances:

(i) If upon review, the Committee determines that a DPM has not performed satisfactorily any condition of his appointment under Subpart (b)(3) or his functions as described in subpart (c) hereof. The Committee may conduct reviews of appointments at any time, and shall do so at least quarterly.

(ii) If a DPM incurs a material financial, operations, or personnel change. Provided, however, that the Committee shall open an option class or classes to a new DPM selection process upon request, if a DPM member organization changes its specified nominee and the former nominee so requests.

(iii) If for any reason the DPM should no longer be eligible for appointment, should resign appointment, or fail to perform his duties. The incumbent DPM may apply for the appointment in the new selection process.

(5) The MTS Committee has discretion to relieve a DPM of his appointment due to a material financial, operations, or personnel change warranting immediate action.

(6) If a DPM has been relieved of his appointment or the appointment otherwise becomes vacant, the MTS Committee has discretion to appoint an interim DPM pending the conclusion of a new DPM selection process. The appointment as interim DPM is not a prejudgment of the new DPM selection process.

(7) Deleted [insert date of effectiveness of SR–CBOE–98–03]. (See Rule 8.95.)

(8) If the MTS Committee decides to terminate a DPM's appointment under subpart (b)(7) of this Rule, the terminated DPM will receive a proportionate share of the net book revenues, not to exceed one-half, for any period specified by the Committee up to a maximum of five years. This award will take into account the length of time of DPM service, capital commitment and efforts expended during the DPM appointment.

(9) The hearing process before the MTS Committee will be as follows:

(i) Appointment Decisions: Each applicant for appointment as DPM will be given an opportunity to present any matter which he wishes the Committee to consider in conjunction with the appointment decision. The Committee may require that presentation to be solely or partially in writing, and may require the submission of additional information from an applicant, member,

or any person associated with a member. Formal rules of evidence do not apply to these proceedings.

(ii) Decisions to Terminate Appointments: The DPM who is the subject of Committee review in conjunction with the termination of a DPM appointment will be so advised and given an opportunity to present any matter which he wishes the Committee to consider in conjunction with the termination decision. The procedure shall be as described in paragraph 9(i) above.

(iii) Review: A DPM relieved of an appointment under subpart (b)(5), (6) or (7) of this Rule, and, in the case of a member organization DPM, the relieved nominee, may seek review of that decision under Chapter XIX of the Rules. A DPM relieved of an appointment under subpart (b)(4) of this Rule may also seek review of that decision under Chapter XIX of the Rules, but only if he applies for reappointment and is denied.

(10) The MTS Committee may perform all functions of the Market Performance Committee under the Rules in respect of review and evaluation of the conduct of DPMs in the classes of his DPM appointment, including but not limited to Rules 6.71, 8.1, 8.2, 8.3, 8.7, and 8.60. The process for review of any action taken by the MTS Committee under this subpart shall be the same as if the action had been taken by the Market Performance Committee.

(c) The DPM is a member who functions in approved classes as a market-maker, floor broker, and in the place of the Order Book Official (''OBO'') exempt from Rule 8.8. In acting as a market-maker, the DPM shall fulfill all obligations of a market-maker in his appointed option class or classes. In acting as a floor broker, and in place of the OBO in appointed options classes, the DPM shall fulfill his obligation of due diligence (and all other obligations associated with these functions). In addition, the DPM shall:

(1) assure that disseminated market quotations are accurate.

(2) assure that each disseminated market quotation in appointed options classes shall be honored up to five contracts, or such other minimum number as set from time to time by the MTS Committee.

(3) determine any formula for generating the automatically updated market quotations, disclosing the elements of the formula to the members of the trading crowd.

(4) in addition to fulfilling general market-maker obligations under Rule 8.7, be present at the trading post throughout every business day, and, with respect to his trading as market-maker, effect trades which have a high degree of correlation with the overall pattern of trading for each series in the options classes involved.

(5) participate at all times in any automated execution system which may be open in appointed option classes.

(6) resolve trading disputes, subject to Floor Official review upon the request of any party to the dispute.

(7) In executing transactions for his own account as market-maker, the DPM shall (i) accord priority to orders he represents as floor broker over his activity as market-maker; (ii) have a right to participate pro rata with the trading crowd in trades that take place at the DPM's principal bid or offer; and (iii) not initiate a transaction for his own account that would result in putting into effect any stop or stop limit order which may be in the book or which he represents as floor broker except with the approval of a Floor Official and when the DPM guarantees that the stop or stop limit order will be executed at the same price as the electing transaction.

(8) In appointed options classes and in other securities traded subject to the rules in Chapter XXX for which a DPM has been appointed, the DPM shall perform all functions of the Order Book Official, pursuant to Rules 7.3 through 71.0, and may, but is not obligated to, accept non-discretionary orders which are not eligible to be placed on the public order book, and to represent such orders as a Floor Broker. The DPM may not represent discretionary orders as a Floor Broker or otherwise. All orders in the DPM's possession which are eligible to be booked shall be booked.

(9) The DPM is designated to disclose book information under Rule 7.8.

(d) The Exchange shall continue to be responsible for the maintenance, handling, and billing of the book in option classes in which a DPM has been appointed, and shall retain and compensate the DPM for performing the OBO function. The Exchange will make personnel available to assist the DPM, as the DPM shall require in the DPM's OBO function, for which personnel the Exchange may charge the DPM a reasonable fee.

* * * Interpretations and Policies: .01 Willingness to promote the Exchange as a marketplace includes assisting in meeting and educating market participants (and taking the time for travel related thereto), maintaining communications with member firms in order to be responsive to suggestions and complaints, responding to suggestions and complaints, responding to competition in offering competitive markets and competitively priced services, and other like activities.

.02 Every registered DPM shall maintain a cash or liquid asset position in the amount of $100,000 or in an amount sufficient to assume a position of twenty trading units of each security in which the DPM holds an appointment, whichever amount is greater. In the event that two or more DPMs are associated with each other and deal for the same DPM account, this requirement shall apply to such DPMs as one unit, rather than to each DPM individually.

.03 In addition to his responsibilities as a Market-Maker, a person appointed to serve as DPM in one or more securities traded subject to the rules in Chapter XXX shall continuously maintain on the floor of the Exchange a two-sided market in the securities for which he has been appointed, consisting of a current bid and a current offer for his account, at prices reasonably calculated, under existing circumstances, to contribute to the maintenance of a supply of and demand for such securities sufficient to afford liquidity to other buyers and sellers of such securities whose orders are represented on the Exchange floor.

Limitations on Dealings of Designated Primary Market-Makers

Rule 8.81. (a) No member (other than a Designated Primary Market Maker (''DPM'') acting pursuant to Rule 8.80 above), limited partner, officer, employee, approved person or party approved, who is affiliated with a DPM or member organization, shall, during the period of such affiliation, purchase or sell any option in which such DPM is registered for any account in which such person or party has a direct or indirect interest. Any such person or party may, however, reduce or liquidate an existing position in an option in which such DPM is registered provided that such orders are (i) identified as being for an account in which such person or party has a direct or indirect interest; (ii) approved for execution by a Floor official; and (iii) executed by the DPM in a manner reasonably calculated to contribute to the maintenance of price continuity with reasonable depth. No order entered pursuant to this paragraph (a) shall be given priority over, or parity with, any order represented in the market at the same price.

(b) Notwithstanding the provisions of Rule 8.80, an approved person or member organization which is affiliated with a DPM shall not be subject to Rule 8.81(a), provided that it has established and obtained Exchange approval of

procedures restricting the flow of material non-public corporate or market information between itself and the DPM and any member, officer, or employee associated therewith.

(c) For such member organization which controls or is controlled by or is under common control with, another organization, the exemption provided in paragraph (b) of this Rule shall be available to it only where the Exchange has determined that the relationship between the DPM, each person associated therewith, and such other organization satisfies all the conditions specified in the guidelines.

(d) The procedures referred to in paragraph (b) of this rule shall comply with such guidelines as are promulgated by the Exchange.

Guidelines for Exemptive Relief Under Rule 8.81 for Members or Member Organizations Affiliated with a Designated Primary Market-Maker

(a) The following restrictions apply to a member or member organization which is affiliated with a designated primary market-maker (''DPM''):

It may not purchase or sell for any account in which it has a direct or indirect interest any security in which its affiliate is a DPM.

It may not engage in any business transaction with the issuer of a security or its insiders in which its affiliate is a DPM.

The member firm may not accept orders directly from the issuer, its insiders or certain designated parties in securities in which its affiliate is a DPM.

This Rule provides a means by which an affiliated firm doing business with the public as defined in Rule 9.1 (hereafter ''member organization'') may obtain an exemption from the restrictions discussed above. This exemption is only available to a member firm which obtains prior Exchange approval for procedures restricting the flow of material, non-public information between it and its affiliated DPM, i.e., a ''Chinese Wall.'' This Rule sets forth the steps a member firm must undertake, at a minimum, to seek to qualify for exemptive relief. Any firm that does not obtain Exchange approval for its procedures in accordance with these Guidelines shall remain subject to the restrictions set forth above.

(b) These Guidelines require that an affiliated member firm establish procedures which are sufficient to restrict the flow of information between itself and the DPM. Generally, an affiliated member firm seeking an exemption from the Rules discussed in paragraph (a) above should establish its operational structure along the lines discussed below.

(i) The affiliated member firm and the DPM must be organized as separate and distinct organizations. At a minimum, the two organizations must maintain separate and distinct books, records and accounts and satisfy separately all applicable financial and capital requirements. While the Exchange will permit the affiliated member firm and the DPM to be under common management, in no instance may persons on the member firm's side of the ''Wall'' exercise influence over or control the DPM's conduct with respect to particular securities or vice versa. Any general managerial oversight must not conflict with or compromise in any way the DPM's market making responsibilities pursuant to the Rules of the Exchange.

(ii) The affiliated member firm and the DPM must establish procedures designed to prevent the use of material non-public corporate or market information in the possession of the affiliated member firm to influence the DPM's conduct and avoid the misuse of DPM market information to influence the affiliated member firm's conduct. Specifically, the affiliated member firm and the DPM organization must ensure that material non-public corporate information relating to trading positions taken by the affiliated member firm in a DPM security are not made available to the DPM; or to any member, partner, director or employee thereof; by a DPM while in possession of non-public corporate information derived by the affiliated member firm from any transaction or relationship with the issuer or any other person in possession of such information; that advantage is not taken of knowledge of pending transactions or the member firm's recommendations; and that all information pertaining to positions taken or to be taken by the DPM and to the DPM's ''book'' in a DPM security is kept confidential and is not made available to the affiliated member firm.

(c) An affiliated member firm seeking exemption shall submit to the Exchange a written statement which shall set forth:

(i) The manner in which it intends to satisfy each of the conditions stated in subparagraphs (b)(i) and (b)(ii) of these Guidelines, and the compliance and audit procedures it proposes to implement to ensure that the functional separation is maintained;

(ii) The designation and identification of the individual(s) within the affiliated member firm responsible for maintenance and surveillance of such procedures;

(iii) That the DPM may make available to a broker affiliated with it only the sort of market information that it would make available in the normal course of its DPM activity to any other broker and in the same manner that it would make information available to any other broker; and that the DPM may only make such information available to a broker affiliated with the member firm pursuant to a request by such broker for such information and may not, on its own initiative, provide such broker with such information;

(iv) That where it ''popularizes'' a security in which it acts as DPM it must disclose that an associated DPM makes a market in the security, may have a position in the security, and may be on the opposite side of public orders executed on the Floor of the Exchange in the security, and the firm will notify the Exchange immediately after the issuance of a research report or written recommendation;

(v) That it will file with the Exchange such information and reports as the Exchange may, from time to time, require relating to its transactions in a specialty security;

(vi) That it will take appropriate remedial action against any person violating these Guidelines and/or its internal compliance and audit procedures adopted pursuant to subsection (c)(i) of these Guidelines, and that it and its associated DPM each recognizes that the Exchange may take appropriate remedial action, including (without limitation) reallocation of securities in which it serves as DPM and/or revocation of the exemption, in the event of such a violation;

(vii) Whether the firm intends to clear proprietary trades of the DPM and, if so, the procedures established to ensure that information with respect to such clearing activities will not be used to compromise the firm's Chinese Wall (the procedures followed shall, at a minimum, be the same as those used by the firm to clear for unaffiliated third parties); and

(viii) That no individual associated with it may trade as a market-maker in any security in which the associated DPM has an appointment.

(d) Paragraph (b) of these Guidelines requires the establishment of procedures designed to prohibit the flow of certain market sensitive information from a member firm to its affiliated DPM or to any member, partner, director or employee thereof. In the event that, notwithstanding these procedures, any DPM becomes aware of the fact that he has received any such information relating to any of his DPM securities from his organization's affiliated member firm, the DPM shall promptly communicate that fact and disclose the

information so received to the person in the affiliated member firm responsible for compliance with securities laws and regulations (the compliance officer) and shall seek a determination from the compliance officer as to whether he should, as a consequence of his receipt of such information, give up the appointment in the option class involved. If the compliance officer determines that the DPM should give up the DPM appointment, the DPM shall, at a minimum, give it up to another member who is registered as DPM in the security and who is not in possession of the information so received. In any such event, the compliance officer shall determine when it is appropriate for the DPM to recover the DPM security and recommence acting as DPM in the DPM security involved. Procedures shall established by the affiliated member firm to assure that in any instance when the compliance officer determines that a DPM should give up the appointment, such transfer is effected in a manner which will prevent the market sensitive information from being disclosed to the temporary DPM.

The compliance officer shall keep a written record of each request received from a DPM for a determination as referred to above. Such record shall be adequate to record the pertinent facts and shall include, at a minimum, the identification of the security, the date, a description of the information received by the DPM, the determination made by the compliance officer and the basis therefor. If the appointment is given up, the record shall also set forth the time at which the DPM reacquired the appointment and the basis upon which the compliance officer determined that such reacquisition was appropriate. The Exchange shall be given prompt notice of any instance when the compliance officer determines that a DPM should give up the appointment and also of the determination that such DPM should be permitted to reacquire the appointment. In accordance with such schedules as the Exchange shall from time to time prescribe (at least monthly), the written record of all requests received by the compliance officer from the affiliated DPM for a determination as referred to above shall be furnished to the Exchange for its review. Members and member organizations are cautioned that any trading by any person while in possession of material, non-public information received as a result of any breach of the internal controls required by the Guidelines may have violated Rule 10b–5, Rule 14e–3, just and equitable principles of trade or one or more other provisions of the Exchange Act, or regulations thereunder or rules of the Exchange. The Exchange intends to review carefully any such trading of which it becomes aware to determine whether any such violation has occurred.

(e) Subparagraph (c)(vii) of these Guidelines permits a member firm to clear the DPM transactions of its affiliated DPM provided it establishes procedures to ensure that information with respect to such clearing activities will not be used to compromise the firm's Chinese Wall. Such procedures should provide that any information pertaining to security positions and trading activities of the DPM, and information derived from any clearing and margin financing arrangements between the affiliated member firm and the DPM, may be made available only to those (other than employees actually performing clearing and margin financing functions) in senior management positions in the affiliated member firm who are involved in exercising general managerial oversight over the DPM. Generally, such information may be made available only to the affiliated member firm's chief executive officer, chief operations officer, chief financial officer, and senior officer responsible for managerial oversight of the DPM, and only for the purpose of exercising permitted managerial oversight. Such information may not be made available to anyone actually engaged in making day-to-day trading decisions for the affiliated member firm, or in making recommendations to the customers or potential customers of the affiliated member firm. Any margin financing arrangements must be sufficiently flexible so as not to limit the ability of any DPM to meet market-making or other obligations under Exchange Rules.

(f) The written statement require by Paragraph (c) of these Guidelines shall detail the internal controls which both the affiliated member firm and the DPM intend to adopt to satisfy each of the conditions stated in subparagraphs (c)(i) through (c)(viii) of these Guidelines, and the compliance and the audit procedures they propose to implement to ensure that the internal controls are maintained. If the Exchange determines that the organizational structure and the compliance and audit procedures proposed by the member firm and its affiliated DPM are acceptable under the Guidelines, the Exchange shall so inform the member firm and its affiliated DPM, in writing, at which point an exemption shall be granted. Absent such prior written approval, an exemption shall not be available. The written statement should identify the individuals in senior management positions (and their titles/levels of responsibility) of the affiliated member firm to whom information concerning the DPM trading activities and security positions, and information concerning clearing and margin financing arrangements, is to be made available, the purpose for which it is to be made available, the frequency with which the information is to be made available, and the format in which the information is to be made available. If any partner, director, officer or employee of the affiliated member firm intends to serve in any such capacity with the DPM, or vice versa, the written statement must include a statement of the duties of the particular individual at both entities, and why it is necessary for such individual to be a partner, director, officer or employee of both entities. The Exchange will grant approval for service at both entities only if the dual affiliation is for overall management control purposes or for administrative and support purposes. Dual affiliation will not be permitted for an individual who intends to be active in the day-to-day business operations of both entities. Nothing in the foregoing, however, shall preclude an employee of one entity who performs strictly administrative or support functions (such as facilities, accounting, data processing, personnel and similar types of services) from performing similar functions on behalf of the other entity, provided that such individual is clearly identified, and the function performed on behalf of each entity are specified, in the written statement described above, and all requirements in Paragraph (b) above as to maintaining the confidentiality of information are met.]

Section D: Allocation of Securities and Location of Trading Crowds and DPMs

Rule 8.95. Allocation of Securities and Location of Trading Crowds and DPMs

* * * * *

* * * Interpretations and Policies: .01 Subject to Rule *8.83(f)* [8.80(b)(6)], it shall be the responsibility of the Allocation Committee and the Special Product Assignment Committee pursuant to paragraph (a) of this Rule to reallocate a security in the event that the security is removed pursuant to another Exchange Rule from the trading crowd or DPM to which the security has been allocated or in the event that for some other reason the trading crowd or DPM to which the security has been allocated no longer retains such allocation.

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Chapter XXX—Stocks, Warrants and Other Securities

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Rule 30.40. Market-Makers

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(b) Classes of Contracts Other Than Those to Which Appointed. With respect to securities in which he does not hold an appointment, a Market-Maker should not engage in transactions for an account in which he has an interest which are disproportionate in relation to, or in derogation of, the performance of his obligations, as specified in paragraph (a) of this Rule, with respect to those securities to which he does hold appointments. Whenever a Market-Maker enters the trading crowd for securities in which he does not hold an appointment in other than a floor brokerage capacity, he shall fulfill the obligations established by paragraph (a) of this rule. On a day on which a transaction in a non-appointed security is effected for the account of a Market-maker, such Market-Maker may be required to undertake the obligations specified in paragraph (a) of this Rule upon request by a Floor Broker, or by the Order Book Official or DPM in accordance with Rules 7.5 and *8.85(b)* [8.80(c)], as applicable. Furthermore, Market-Makers should not:

(i) Congregate in a particular security; or

(ii) Individually or as a group, intentionally, or unintentionally, dominate the market in a particular security; or

(iii) Effect purchases or sales on the floor of the Exchange except in a reasonable and orderly manner.

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Rule 30.73—Application of Exchange Rules

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* * * Interpretations and Policies:

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.02 Any acceptance of a commitment or obligation to trade received on the floor through ITS or any other application of the System shall comply with the rules applicable to the making of bids and offers and transactions on the floor, except where the context otherwise requires. In addition, the following rules shall be applicable in the case where commitments or obligations to trade are issued (transmitted) from the floor of the Exchange Rules 6.3, 6.6, 6.21, 6.22, 6.24, 8.1 through 8.6, 8.8, *8.85, 8.87, 8.91,* [8.80, 8.81,] 30.3, 30.4, 30.16, 30.18 and 30.40.

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II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange's DPM program began as a pilot program in 1987 with 4 DPMs allocated a total of 11 equity option classes.[3] In the more than 10 years since the introduction of the DPM program, the program has experienced significant growth and success and was granted permanent approval by the Commission in 1994.[4] Currently, the program includes 28 DPMs, and those DPMs have been allocated over 675 equity option classes, as well as numerous index option classes and structured products.

Over the course of the more than 10 year evolution of the DPM program, the Exchange has developed various procedures for implementing the rule provisions that govern the program. However, the Exchange has made relatively few changes to these rule provisions, which are set forth in CBOE Rules 8.80 and 8.81, since the time these provisions were first promulgated in 1987. The purpose of this proposed rule change is to update the rule provisions relating to DPMs so that they address the various procedures that have been implemented over time pursuant to Rules 8.80 and 8.81 and so that they incorporate various proposed improvements and enhancements that the Exchange believes will be beneficial to the operation of the DPM program based on the Exchange's decade-long experience in operating the program. Additionally, the Exchange proposes to reorganize the rule provisions that govern the DPM program by segregating them into 12 separate rules that each address 1 of the 12 primary aspects of the DPM program. The Exchange believes that this restructuring will improve the organization of the rule provisions relating to DPMs and make it easier for the Exchange's membership to reference and understand these provisions.

The proposed rule changes are the product of a comprehensive review and evaluation by the Exchange of the current rule provisions relating to DPMs. This thorough and detailed review and evaluation was conducted by Exchange staff, the Exchange's Modified Trading System Appointments Committee (''MTS Committee''), the Exchange's Floor Directors Committee, and the Exchange's Board of Directors, and involved numerous meetings and discussions by and among these groups over several years.

Under this proposed change, the Exchange's rule provisions relating to DPMs are proposed to be segregated into proposed Rules 8.80 through 8.91. Set forth below is a summary of each of these proposed rules.

Rule 8.80—DPM Defined. Proposed Rule 8.80 defines a DPM as a member organization that is approved by the Exchange to function in allocated securities as a Market-Maker, Floor Broker, and Order Book Official. The only change to this definition from the current DPM definition is that proposed Rule 8.80 requires a DPM to be a member organization. The purpose of this additional requirement is to ensure that each DPM has a formal organizational structure in place to govern the manner in which it will operate and to define the relationship between the individuals associated with the DPM. Proposed Rule 8.80 also clarifies that DPMs are approved by the MTS Committee and are allocated securities by the Exchange's Allocation Committees.[5]

Rule 8.81—DPM Designees. Proposed Rule 8.81 is divided into four subparagraphs, (a) through (d), and sets forth the requirements applicable to DPM Designees.

Proposed Rule 8.81(a) makes explicit that a DPM may act as a DPM solely through its DPM Designees and defines a DPM Designee as an individual who is approved by the MTS Committee to represent a DPM in its capacity as a DPM. Proposed Rule 8.81(a) also provides that the MTS Committee may subclassify DPM Designees and require certain DPM Designees to be subject to

[3] See Securities Exchange Act Release No. 24934 (September 22, 1987) 52 FR 36122 (September 25, 1987) (order approving file No. SR–CBOE–87–18).

[4] See Securities Exchange Act Release No. 34999 (November 22, 1994) 59 FR 61361 (November 30, 1994) (order approving File No. SR–CBOE–94–36).

[5] The Exchange's process for allocating securities to DPMs and Market-Maker trading crowds is set forth in Rule 8.95, recently approved by the Commission. See Securities Exchange Act Release No. 39879 (April 16, 1998) 63 FR 20227 (April 23, 1998).

specified supervision and/or to be limited in their authority to represent the DPM. For example, the MTS Committee may wish to require that less experienced DPM Designees only act in that capacity when a more experienced DPM Designee is also present at the trading station to provide supervision.

Proposed Rule 8.81(b) requires each DPM Designee of a DPM to (i) be an Exchange member, (ii) be a nominee of or an affiliate of the DPM, or own a membership that has been registered for the DPM or for an affiliate of the DPM, (iii) be registered with the Exchange as a Market-Maker and a Floor Broker, (iv) have in place an authorization from the DPM to act on its behalf and a guarantee from the DPM guarantying the designee's obligations arising out of its representation of the DPM, and (v) be approved by the MTS Committee. Additionally, Rule 8.81(b) provides that a DPM Designee approval will expire if the individual does not have trading privileges on the Exchange for a 6 month period. This provision is intended to ensure that any DPM Designee who has no trading privileges for 6 months (and therefore does not engage in trading activities during that period) and who then desires to act again in the capacity of a DPM Designee will be reviewed by the MTS Committee so that the Committee can evaluate whether the individual remains qualified to act as a DPM Designee.

Proposed Rule 8.81(c) requires each DPM to have at least 2 DPM Designees who are nominees of the DPM or who have a membership that has been registered for the DPM. Exchange rules require each member organization to have at least 1 nominee or person who has registered his or her membership for the organization, and the purpose of Rule 8.81(c) is to help to ensure that a DPM remains qualified to act as a member organization, and hence a DPM, if a nominee or person who has registered his or her membership for the organization departs from the organization.

Proposed Rule 8.81(d) incorporates two existing rule provisions. First, proposed Rule 8.81(d) provides that a DPM Designee of a DPM may not trade as a Market-Maker or Floor Broker in securities allocated to the DPM unless the DPM Designee is acting on behalf of the DPM in its capacity as a DPM. Similar provisions are currently embodied in CBOE Rule 8.3.01 (which is proposed to be deleted) and in current Rule 8.81 (which is proposed to be substantially restated in proposed Rule 8.91). Second, proposed Rule 8.81(d) provides that a DPM Designee is exempt from the provisions of CBOE Rule 8.8 when acting on behalf of the DPM in its capacity as a DPM. Rule 8.8 generally prohibits a member from acting as both a Market-Maker and Floor-Broker in a trading station on the same day, and the exemption to Rule 8.8 for DPMs is currently set forth in current Rule 8.80(c).

Rule 8.82—MTS Committee. Proposed Rule 8.82 governs the composition of the MTS Committee and retains the current 11 member composition of the Committee, which consists of the Vice-Chairman of the Exchange, the Chairman of the Exchange's Market Performance Committee, 4 members whose primary business is as a Market-Maker, 2 members whose primary business is as a Market-Maker or as a DPM Designee, 1 member whose primary business is as a Floor Broker who is not associated with a member organization that conduct a public customer business, and 2 persons associated with member organizations that conduct a public customer business. Currently, the 9 members of the MTS Committee, other than the Vice-Chairman and the Chairman of the Market Performance Committee, are nominated by the Nominating Committee and appointed by the Board of Directors to serve 2 year terms on the Committee. Under Rule 8.82, these 9 members of the Committee will be elected by the Exchange's membership in the same manner that elected Exchange Directors are chosen by the membership. In addition, Rule 8.82 increases the length of the terms to be served by these 9 members of the Committee to 3 years [6] and provides that no more than 2 of the 9 elected MTS Committee members may be associated with a DPM. Because of the important responsibilities of the MTS Committee, the Exchange believes that that MTS Committee should be composed of individuals who have been elected by the membership. The Vice-Chairman is already elected by the membership and the Chairman of the Market Performance Committee is typically one of the Exchange's elected Directors. In addition, the Exchange believes that increasing the term lengths of the MTS Committee members by one year will provide the Committee with more continuity and expertise in addressing issues that come before the Committee.

Rule 8.83—Approval to Act as a DPM. Proposed Rule 8.83 addresses the DPM approval process. For the most part, it consists of a restatement of the current provisions that govern the DPM approval process as set forth in current Rule 8.80.[7] For example, Rule 8.83 describes the criteria that may be considered by the MTS Committee in deciding whether to approve an application as a DPM (including such factors as adequacy of capital, operational capacity, trading experience, regulatory history, and market performance), and provides that each applicant will be given an opportunity to present any matter which it wishes the MTS Committee to consider in conjunction with the approval decision. Additionally, as with any decision of the MTS Committee (other than an approval or failure to approve a proposed transfer of a DPM appointment, which is subject to direct review by the Board of Directors as discussed below), any applicant not approved by the MTS Committee to act as a DPM may appeal that decision to the Exchange's Appeal Committee under Chapter XIX of the Exchange's Rules. The appeal procedures provide for the right to a formal Appeals Committee hearing concerning any such decision, and the decision of the Appeals Committee may be appealed to the Board of Directors pursuant to CBOE Rule 19.5.

Rule 8.84—Conditions on the Allocation of Securities to DPMs. Proposed Rule 8.84 grants the MTS Committee new authority to establish (i) restrictions applicable to all DPMs on the concentration of securities allocable to a single DPM and (ii) minimum eligibility standards applicable to all DPMs which must be satisfied in order for a DPM to receive allocations of securities, including but not limited to standards relating to adequacy of capital and number of personnel. Among the reasons for granting the MTS Committee the authority to limit the concentration of securities allocable to a single DPM is to promote competition on the Exchange's trading floor and to help to ensure that no DPM is allocated such a large number of securities that it would be difficult for the Exchange to quickly reallocate those securities to other DPMs and/or Market-Maker trading crowds in

[6] Upon the effectiveness of this proposed rule change, the MTS Committee members at that time will remain as members of the Committee until their then current terms expire. Because MTS Committee members currently serve 2 year terms (with 4 or 5 of those terms expiring each year) and because Rule 8.82 provides that the MTS Committee members will serve 3 year terms (with 3 of those terms expiring each year), the Exchange's Nominating Committee will shorten the length of some of the terms of the MTS Committee positions elected in the first 2 years following the effectiveness of this rule change in order to ensure that 3 positions on the MTS Committee will come up for election each year once the 3 year terms are fully phased in.

[7] Many of the obligations of a DPM, which are currently set forth in Rule 8.80(c), are proposed to be moved to proposed Rule 8.85, discussed below.

the event that for some reason the DPM were no longer able to preform as a DPM. Among the reasons for granting the MTS Committee the authority to establish minimum eligibility standards for DPMs to receive allocations of securities is to help to ensure that a DPM has the financial and operational capacity to handle additional allocations of securities. Similarly, the MTS Committee may utilize this Rule to establish specific minimum market performance standards that must be satisfied by the DPMs in order to receive allocations of securities so that a DPM that is not performing adequately with respect to the securities that have already been allocated to the DPM is not allocated additional securities.

Rule 8.85—DPM Obligations. Proposed Rule 8.85 describes the obligations of a DPM, including the general obligation with respect to each of its allocated securities to fulfill all of the obligations under Exchange Rules of a Market-Maker, of a Floor Broker (to the extent that the DPM acts as a Floor Broker), and of an Order Book Official.

Most of the obligations and other provisions contained in proposed Rule 8.85 are contained in current Rule 8.80. In some instances, these provisions are proposed to be slightly modified to clarify their scope. Among the new DPM obligations and related provisions set forth in Rule 8.85 are the following:

Proposed Rule 8.85(a)(vi) requires a DPM to segregate in a manner prescribed by the MTS Committee (i) all transactions consummated by the DPM in securities allocated to the DPM and (ii) any other transaction consummated by or on behalf of the DPM that are related to the DPM's DPM business. This will permit the Exchange to monitor each DPM's trading positions in order to ensure that the DPM is in compliance with the financial and other requirements that are applicable to DPMs. In addition, the Exchange proposes to charge a $250 processing fee for each DPM Designee that will be executing transactions on behalf of a DPM in that DPM's segregated account(s). This is the same fee amount that is charged for each participant in a joint account established pursuant to CBOE Rule 8.9. Since DPMs currently utilize joint accounts to segregate their transactions, the proposed $250 fee will essentially replace the $250 joint account fee that DPMs are currently being assessed in this regard.

Current Rule 8.80(c)(3) requires each DPM to determine a formula for generating automatically updated market quotations and to disclose the components of the formula to the other members trading at the DPM's trading station. Proposed Rule 8.85(a)(viii) restates this requirement and clarifies the requirement by specifying that the components of the formula that are required to be disclosed include the option pricing calculation model, volatility, interest rate, dividend, and what is used to represent the price of the underlying. Rule 8.85(a) also provides that the MTS Committee shall have the discretion to exempt DPMs using proprietary automated quotation updating systems having to disclose proprietary information concerning the formulas used by those systems. Most DPMs utilize the Exchange's Auto Quote System to generate automatically updated market quotations and therefore would not be eligible for an exemption of this kind.

Proposed Rule 8.85(b)(i) restates the current requirement that a DPM is obligated to place in the public order book any order in the DPM's possession that is eligible for entry into the book, subject to two limited exceptions. First, Rule 8.85(b)(i)(A) clarifies that a DPM is not obligated to book a book-eligible order if the DPM immediately executes the order upon its receipt. This permits a DPM to immediately execute a marketable customer order without having to delay that execution by first placing the order in the public order book. Second, Rule 8.85(b)(i)(B) provides that a DPM may refrain from booking a book-eligible order if the customer who placed the order has requested that the order not be booked, and upon receipt of the order, the DPM announces in public outcry the information concerning the order that would be displayed if the order were a displayed order in the public order book. Rule 8.85(b)(i)(B) is intended to accommodate the wishes of customers who desire an opportunity for price improvement before the execution of a limit order at its limit price, while at the same time requiring the information concerning the order that would have been displayed in the public order book to be disclosed to the other members of the trading crowd, so that the other members of the trading crowd are not at an informational disadvantage.

Proposed Rule 8.85(b)(ii) elaborates upon the requirement set forth in Rule 8.85(b)(i) by requiring that a DPM not remove any order from the public order book except in two circumstances. First, Rule 8.85(b)(ii)(A) clarifies that a DPM may remove an order from the book if the order is canceled, expires, or is executed. Second, Rule 8.85(b)(ii)(B) clarifies that a DPM may return an order to the member that placed the order with the DPM when so requested by that member. For example, a Floor Broker may desire to leave an order with a DPM temporarily while the Floor Broker attends to business elsewhere on the trading floor, or until such time as the prevailing market moves closer to the order's limit price.

Proposed Rule 8.85(b)(iii) restates the current requirement that a DPM is obligated to accord priority to any order which the DPM represents as agent over the DPM's principal transactions, and sets forth one narrow exception to this requirement in circumstances where the customer who placed the order has consented to not being accorded such priority. This exception is intended to address situations such as the following. Under both the current and proposed DPM rules, a DPM may, but is not obligated to, accept non-discretionary orders that are not eligible to be placed in the public order book, such as orders from a competing specialist or other broker-dealer. Competing specialists have on occasion inquired as to whether a DPM would be willing to represent an order on behalf of the competing specialist if the competing specialist were to agree to waive the priority requirement and/or allow the DPM to participate (or match) with the competing specialist's order. However, despite the fact that both the DPM and the customer (in this case, the competing specialist) may desire to have such an arrangement, they are unable to do so under the current rules, which allow no exceptions to the requirement that a DPM accord priority to the orders it represents. Rule 8.85(b)(iii) would permit a DPM to accommodate a customer who desires to have a DPM represent an order and to waive this priority requirement with respect to the order.

Proposed Rule 8.85(b)(iv) restates the current requirement that a DPM may not charge any brokerage commission with respect to the execution of any order for which the DPM has acted as both agent and principal. Additionally, just as with respect to the priority requirement set forth in proposed Rule 8.85(b)(iii), there is an exception to the requirement set forth in Rule 8.85(b)(iv) if the customer consents. The reasons for this exception are the same as the reasons for the exception to the priority requirement in Rule 8.85(b)(iii). It should also be noted that although Rule 8.85(b)(iv) would not permit a DPM to charge a brokerage commission with respect to the execution of an order for which the DPM acts as both agent and principal (subject to the limited exception described above), the DPM would be permitted under Rule 8.85(b)(iv) to bill back to the customer any Exchange fees

charged to the DPM with respect to the execution of the order.

As noted above, a DPM may, but is not obligated to, accept non-discretionary orders that are not eligible to be placed in the public order book. However, proposed Rule 8.85(b)(v) also provides that a DPM is required to act as a Floor Broker to the extent required by the MTS Committee. The purpose of Rule 8.85(b)(v) is to permit the MTS Committee to require a DPM to act as a Floor Broker if there is a need for the DPM to act in this capacity. For example, the MTS Committee may require a DPM to act as a Floor Broker if regular Floor Brokers are not available to represent orders in the securities allocated to the DPM.

Proposed Rule 8.85(b)(vi) restates the current requirement that a DPM may not represent discretionary orders as a Floor Broker or otherwise. Rule 8.85 also provides that the MTS Committee may authorize a DPM, on a temporary basis, to accept and represent types of orders in one or more of the securities allocated to the DPM which vest the DPM with limited discretion, if the MTS Committee determines that unusual circumstances are present and that the acceptance and representation of such orders by the DPM is necessary in order to assure that there will be adequate representation in such securities of those types of orders. As with Rule 8.85(b)(v), the purpose of this provision is to grant MTS Committee the ability to invoke this provision if there is a need for a DPM to act in this capacity, such as if regular Floor Brokers are not available to do so.

Rule 8.86—DPM Financial Requirements. Proposed Rule 8.86 restates the current requirement that each DPM is required to maintain net liquidating equity in its DPM account of not less than $100,000. It also includes two requirements which, although they are currently applicable to DPMs, are not referenced in the current DPM rules. Specifically, Rule 8.86 includes the requirement that each DPM maintain net capital sufficient to comply with the requirements of Rule 15c3–1 under the Act and that each DPM which is an Exchange Clearing Member also maintain net capital sufficient to comply with the requirements of The Options Clearing Corporation. Although there are other rules which already subject DPMs to these requirements, the Exchange believes that it is worthwhile to also include these requirements in Rule 8.86 so that the Rule is more informative and complete.

Additionally, proposed Rule 8.86 requires DPMs to maintain net liquidating equity in their DPM accounts in conformity with such guidelines as the MTS Committee may establish from time to time. The Exchange currently uses DPM financial guidelines in connection with the process for allocating securities to DPMs, and Rule 8.86 would permit the Exchange to implement and enforce such guidelines and future equity guidelines as DPM financial requirements under the Rules. The MTS Committee has established financial guidelines that it intends to utilize under Rule 8.86. Under these guidelines, in order for a DPM to apply for the allocation of securities, the DPM must have in its DPM account $350,000 plus $25,000 in equity for each security that has been allocated to the DPM in excess of the initial 8 securities allocated to the DPM. Because these guidelines are more stringent than the current requirement that a DPM must maintain an equity amount sufficient to assume a position of 20 trading units of each security which has been allocated to the DPM, that requirement has been eliminated.

Rule 8.87—Participation Entitlement of DPMs. A DPM's right to participate as principal in a transaction is generally governed by the principles of time and price priority as set forth in CBOE Rule 6.45. Under these principles, if a DPM announces a bid (offer) for the DPM's own account ahead of other members in response to a request for a market from a member not acting on behalf of the DPM, the DPM is entitled to participate up to 100% in any resulting transaction. In addition to the rights granted by Rule 6.45, current Rule 8.80(c)(7)(ii) grants each DPM a right to participate ''pro rata'', with the Market-Makers present in the trading crowd, in any transaction in a security that has been allocated to the DPM if the DPM's previously established principal bid (offer) was equal to the highest bid (lower offer) in the trading crowd, even if the DPM's bid (offer) is not entitled to priority under CBOE Rule 6.45. Because the term ''pro rata'' is not precisely defined by current Rule 8.80(c)(7)(ii), the scope of that term, and hence the participation right, has historically been interpreted by the MTS Committee.

Since 1993, the MTS Committee has interpreted a DPM's participation right in transactions that occur in an allocated security (when the DPM's previously established principal bid (offer) was equal to the highest bid (lowest offer) in the trading crowd) to consist of the following: an initial 40% participation right, a 30% participation right when average daily volume in the security over the previous calendar quarter reaches 2501 contracts, and no guaranteed participation right when average daily volume in the security over the previous calendar quarter reaches 5,000 contracts. Additionally, the MTS Committee has determined to maintain all multiply traded securities at the 40% participation level until further notice.

Proposed Rule 8.87 formalizes the authority of the MTS Committee to determine the appropriate participation right for DPMs by providing that the MTS Committee, subject to review by the Board of Directors, may establish from time to time a participation entitlement formula that is applicable to all DPMs. Additionally, Rule 8.87 further provides that, in accordance with the established formula, each DPM shall have a right to participate for its own account with the Market-Makers present in the trading crowd in transactions in the DPM's allocated securities that occur at the DPM's previously established principal bid or offer.

Rule 8.88—Review of DPM Operations and Performance. Proposed Rule 8.88(a) restates that current rule provision that the MTS Committee may conduct a review of a DPM's operations or performance any time, and clarifies that such reviews may be conducted by a subcommittee of the MTS Committee. Rule 8.88(a) also clarifies that a DPM and its associated persons are obligated to submit information requested by the MTS Committee in connection with such a review. The current rule provision which contemplates that such reviews will be conducted at least quarterly has been revised to provide that, at a minimum, a review of each DPM's operations and performance shall be conducted on an annual basis. The reason for this change is that the Exchange does not believe it is necessary to conduct a formal and detailed operational and performance review of each DPM more than once a year. In the interim, the MTS Committee will review information regarding each DPM's operations and performance on an ongoing basis and will conduct a review of, and/or speak with, any DPM that has any operational or performance issues that need to be addressed prior to that DPM's next annual review. The Exchange believes that this approach is more effective than quarterly reviews, since it will permit the MTS Committee to timely address any operational or performance issues that require immediate attention, while allowing more time to be spent on each formal and detailed DPM review.

Proposed Rule 8.88(b) provides that the MTS Committee shall perform the market performance evaluation and

remedial action functions set forth in CBOE Rule 8.60 with respect to DPMs and that the MTS Committee may combine a review conducted pursuant to Rule 8.88(a) with an evaluation conducted pursuant to Rule 8.60. This is consistent with current Rule 8.80(b)(10) which also provides that the MTS Committee may review and evaluate the conduct of DPMs pursuant to Rule 8.60.

On the other hand, current Rule 8.80(b)(10) also grants the MTS Committee market performance authority with respect to other issues relating to DPMs that the Exchange now believes should be handled by other Exchange committees. The Exchange believes that this authority should be transferred from the MTS Committee to these other committees because these other committees already have responsibility concerning these issues for non-DPMs and because consolidating responsibility for these issues will result in greater efficiency. Thus, for example, the authority to determine the series eligible for the Exchange's Retail Automatic Execution System (RAES) and the eligible size of RAES orders for securities allocated to DPMs, which is currently exercised by the MTS Committee pursuant to CBOE Rule 6.8, has been consolidated in the Exchange's Floor Procedure Committees since they have responsibility for these issues for securities that are allocated to non-DPM trading crowds. Similarly, the authority under the Rules with respect to DPM RAES participation and eligibility, which is currently exercised by the MTS Committee pursuant to CBOE Rule 8.16, has been consolidated in the Exchange's Market Performance Committees since they have responsibility for these issues for non-DPMs.

One market performance related authority that the Exchange has determined that MTS Committee should retain is Floor Official authority. Thus, proposed Rule 8.88(c) provides that members of the MTS Committee may perform the functions of a Floor Official at DPM trading stations. MTS Committee members currently possess this authority by virtue of current Rule 8.80(b)(10), which provides that the MTS Committee may perform all of the functions of the Market Performance Committee under the Rules, and CBOE Rule 6.20.09, which provides that members of the Market Performance Committee may perform the functions of a Floor Official for the purpose of enforcing trading conduct policies. The Exchange believes that MTS Committee members should retain Floor Official authority with respect to DPM trading stations because MTS Committee members have expertise with respect to the trading conduct rules that are applicable to DPMs. In addition, acting as Floor Officials at DPM trading stations allows MTS Committee members to stay abreast of issues that may arise at these stations and provides the MTS Committee with a valuable source of information which the Committee utilizes in connection with its oversight of the performance and operations of DPMs.

Proposed Rule 8.88 expands the market performance responsibilities of the MTS Committee by providing that the MTS Committee shall perform the market performance evaluation and remedial action functions set forth in Rule 8.60 with respect to the Market-Makers that trade at DPM trading stations, in addition to performing these functions with respect to DPMs. The primary reason for this change is that the performance of a DPM trading crowd is influenced by both the DPM and the Market-Makers that trade in the crowd. Accordingly, the Exchange believes that it will be more efficient if one committee exercises the market performance and remedial action responsibilities with respect to both the DPM and the Market-Makers that trade in a DPM trading crowd, instead of the current bifurcated structure in which the MTS Committee has market performance authority with respect to the DPM and the Market Performance Committee has market performance authority with respect to the Market-Makers.

Rule 8.89—Transfer of DPM Appointments. Current Rule 8.80(b)(3) provides that a DPM appointment may not be transferred without the approval of the MTS Committee. Proposed Rule 8.89 expands upon this provision by setting forth both a detailed procedure for the consideration of any proposal to sell, transfer, or assign an interest in a DPM, and the standards that apply to such consideration. This procedure is set forth in proposed Rules 8.89(a) through 8.89(f) and consists of the following:

Proposed Rule 8.89(a) provide that a DPM proposing any sale, transfer, or assignment or any ownership interest or any change in its capital structure, voting authority, or distribution of profits or losses shall give at least 30 days prior written notice of the proposed change to the MTS Committee. Rule 8.89(a) further provides that if the transaction is deemed to involve the transfer of a DPM appointment, the transaction is required to be approved by the MTS Committee before it may be consummated.

Proposed Rule 8.89(b) defines the transfer of a DPM appointment to include, among other things, any sale, transfer, or assignment of any significant share of the ownership of a DPM and defines the foregoing to include any sale, transfer, or assignment of a 5% or more interest in the equity or profits or losses of the DPM (or a series of smaller changes that in the aggregate amount to a change of 5% or more). Additionally, Rule 8.89(b) provides that a sale, transfer, or assignment of less than 5% may also be found by the MTS Committee to represent a significant share of the ownership of a DPM depending on the surrounding facts and circumstances.

Proposed Rule 8.89(c) provides that any DPM desiring to obtain approval of a transaction that is deemed to involve the transfer of a DPM appointment is required to submit a written application to the MTS Committee at least 30 days prior to the proposed effective date of the transaction. Rule 8.89(c) also requires that the application contain a full and complete description of the proposed transaction, including among other things, the transferee's ownership and capital structure, the identity of those persons who will perform the duties of the DPM following the transaction, the terms of the transaction, and any other material information pertaining to the transaction that the MTS Committee may request.

Proposed Rule 8.89(d) provides that promptly after the receipt of a completed application for the approval of a proposed transfer of a DPM appointment, the MTS Committee will post notice of the proposed transfer on the Exchange Bulletin Board and in the Exchange Bulletin and that the MTS Committee will not ordinarily consider the proposed transfer until it has been posted on the Bulletin Board for at least 10 days. Rule 8.89(d) also provides that during this posting period the MTS Committee will accept written comments on the proposed transfer from any member and will accept written proposals from other members and from Market-Maker trading crowds that wish to be considered for appointment in some or all of the options classes that are impacted by the proposed transfer.

Proposed Rule 8.89(e) sets forth the factors that may be considered by the MTS Committee in determining whether to approve a proposed transfer of a DPM appointment. These factors include (i) the financial and operational capacity of the transferee, (ii) the continuity of control, management, and persons responsible for the operation of the DPM, (iii) avoiding undue concentration of DPM appointments on the Exchange,

(iv) available alternatives for reallocating the DPM's appointment taking into account comments made and alternatives proposed by other members during the posting period, and (v) the best interests of the Exchange. In addition, Rule 8.89(e) provides that no application relating to a proposed transfer of a DPM appointment will be approved by the MTS Committee until it is accompanied by complete and final documents pertaining to the transfer, except as the MTS Committee may agree to defer the delivery of specific documents for good cause shown.

Proposed Rule 8.89(f) provides that the approval or failure to approve a proposed transfer of a DPM appointment is subject to direct review by the Board of Directors upon receipt by the Secretary of the Exchange, within 10 days of the time the decision of the MTS Committee is announced, of (i) a written request for review made by the applicant (in the case of a failure to approve an application as submitted) or (ii) a request for review made by at least 5 Directors of the Exchange (in any case). In the event of a request for review, the Board will appoint a panel Directors to review the matter. Following this review, the panel, with the assistance of Board counsel, will prepare a proposed written decision of the Board concerning the matter and will submit the proposed decision to the full Board for discussion and consideration. The Board will then decade whether to adopt or modify the proposed decision and will issue its final decision to the applicant and to the MTS Committee.

In conjunction with proposed Rule 8.89, the Board of Directors has also issued a memo to the MTS Committee which conveys the Board's views with respect to the various factors that may bear upon whether a request to transfer an interest in a DPM appointment should be approved. The purpose of the memo is to provide guidance to the MTS Committee concerning the types of considerations that the Board believes should be taken into account in evaluating such requests. Among the guidance provided in the memo is the Board's view that a DPM's franchise in its allocated securities is not a transferable property interest owned by the DPM. Thus, the Board states in the memo that it does not believe that the outright sale of all or a part of a DPM's business should ordinarily be approved. Nevertheless, the Board also states that it recognizes that there are circumstances where it may be in the best interests of both the DPM and the Exchange to permit the transfer of some or all of the DPM's interest in its DPM appointment, even though this may result in the DPM being paid for the value of the goodwill in its DPM business. For example, the Board states that such circumstances might include situations where a transfer is for the purpose of attracting new capital to an existing successful DPM to enable it to expand its market-making activities, or to enable the DPM to bring in a new partner or other principal, or in response to an emergency need for capital where there is reason to permit the existing DPM to remain involved in the operation and therefore not to reallocate its appointment, assuming in each case that the expansion or increase in capital is found to be necessary or desirable in the best interests of the Exchange.

The Exchange believes that proposed Rule 8.89 and the accompanying memo from the Board of Directors will improve the current rule provision regarding transfer of DPM appointments both by setting forth a detailed procedure for considering such requests, which will help to ensure that the MTS Committee has sufficient information on which to base decisions regarding such requests, including member input, and by setting forth the appropriate criteria to be utilized in evaluating such requests.

Rule 8.90—Termination, Conditioning, or Limiting Approval to Act as a DPM. Proposed Rule 8.90 governs the termination, conditioning, and limiting of approval to act as a DPM. For the most part, it restates, with certain clarifications, provisions that are contained in current Rule 8.80. For example, Rule 8.90(a) clarifies that the MTS Committee may condition or limit a DPM's appointment (in addition to being permitted to terminate the appointment) if the DPM (i) incurs a material financial, operational, or personnel change, (ii) fails to comply with the rules applicable to DPMs or any conditions placed on its DPM appointment, or (iii) is no longer eligible to act as a DPM. In addition, Rule 8.90(c) clarifies that limiting a DPM's appointment may include, among other things, limiting or withdrawing a DPM's participation entitlement, withdrawing a DPM's right to act as a DPM in one or more of its allocated securities, and requiring a relocation of the DPM on the trading floor.

As is the case under current Rule 8.80, proposed Rule 8.90(a) generally provides that before the MTS Committee may take any action to terminate, condition, or otherwise limit a member organization's approval to act as a DPM, the member organization will be given notice of such possible action and an opportunity to present any matter which it wishes the MTS Committee to consider in determining whether to take such action. The only exception to this provision is that, as under current Rule 8.80, the MTS Committee has the authority to immediately terminate, condition, or otherwise limit a member organization's approval to act as a DPM if the DPM incurs a material financial, operational, or personnel change warranting such action or if the DPM fails to comply with any of the financial requirements applicable to DPMs.

As is also the case under the current DPM rules, if a member organization's approval to act as a DPM is terminated, conditioned, or otherwise limited by the MTS Committee pursuant to proposed Rule 8.90, Rule 8.90(d) provides that the member organization may appeal that decision to the Appeals Committee under Chapter XIX. Additionally, as is described above, these appeal procedures provide for the right to a formal Appeals Committee hearing concerning any such decision, and the decision of the Appeals Committee may be appealed to the Board of Directors.

Rule 8.91—Limitations on Dealings of DPMs and Affiliated Persons of DPMs. Guidelines for Relief Under Rule 8.91(d) for Members Affiliated with DPMs. Proposed Rule 8.91 and the accompanying proposed guidelines for exemptive relief under Rule 8.91(d) restate the rule provisions that are currently contained in current Rule 8.81 and the current guidelines for exemptive relief that accompany that Rule. Proposed Rule 8.91 and its accompanying guidelines are intended to more clearly reflect those provisions and how they have historically been interpreted by the Exchange. For example, the organization of these provisions have been improved by including in proposed Rule 8.91 all three of the restrictions on DPM affiliates that are set forth in the current provisions, instead of including only one of these restrictions in the Rule and including the other two restrictions in the accompanying guidelines, as is currently the case. Also, the restrictions on DPM dealings with an issuer are restated to take into account that in the case of options, which are nominally issued by The Options Clearing Corporation, these restrictions are intended to apply to dealings with the issuer of the underlying security, whereas in the case of securities other than options, they apply to dealings with the issuer of the security itself. Additionally, other clarifying revisions of a similar nature have been made to the current provisions without changing

the substance of these provisions as they have been interpreted by the Exchange.

Deletions from Current DPM Rules. Among the significant deletions from the current DPM rules that are not discussed above are the following:

Current Rule 8.80(b)(4)(ii) provides that the MTS Committee shall open a DPM's allocated option classes to a new DPM section process if the DPM changes its specified nominee and the former nominee so requests. The Exchange no longer believes that this provision is appropriate because DPM organizations are generally much larger than they used to be. Today, DPMs often have many nominees, and nominees are added to and depart from DPM organizations more frequently than in the early years of the DPM program. For this reason, most DPM nominees no longer have the same stake in their DPM organizations that many DPM nominees may have had in the past. Thus, it is often no longer equitable to allow a DPM nominee to request a new DPM section process for that DPM's allocated securities following the nominee's departure from the DPM organization.

Two provisions relating to maintenance of the public order book have also been deleted. First, current Rule 8.80(b)(8), which provides that under certain circumstances a terminated DPM will receive a proportionate share of the net book revenues for a period specified by the MTS Committee (up to a maximum of 5 years), has not been retained in the proposed DPM rules. The original purpose of this provision was to provide incentive to members to apply to be appointed as a DPM. Because the interest in becoming a DPM has grown throughout the years, this incentive is no longer necessary to attract DPM candidates.

Second, the Exchange is eliminating the provision of current Rule 8.80(d) which provides that the Exchange shall be responsible for the maintenance, handling, and billing of the public order book and shall retain and compensate the DPM for performing the Order Book Official function. The reason for this deletion is that over time DPMs have taken on the responsibility for the maintenance, handling, and billing of the public order book, and the Exchange no longer retains this responsibility nor compensates DPMs for performing these functions. However, the current provision of Rule 8.80(d) which contemplates that the Exchange may make personnel available to assist a DPM in the DPM's performance as an Order Book Official, for which the Exchange may charge the DPM a reasonable fee, has been retained in proposed Rule 8.85.01 with one minor modification. Specifically, proposed Rule 8.85.01 merely permits, and does not require, the Exchange to provide this assistance when it is requested. This change has been made because, although the Exchange is often able to provide such assistance to DPMs, the Exchange may not always be able to do so.

Finally, current Rule 8.80(c)(7)(iii) is being deleted because the procedure called for under the Rule is cumbersome and because the concern that the Rule addresses is adequately addressed by another Exchange Rule. Current Rule 8.80(c)(7)(ii) provides that a DPM may not initiate a transaction for its own account that would result in putting into effect any stop or stop limit order which may be in the public order book or which the DPM represents as Floor Broker, except with the approval of a Floor Official and when the DPM guarantees that the stop or stop limit order will be executed at the same price as the electing transaction. This procedure is cumbersome because it necessitates that a Floor Official be summoned to the trading station each of the many times this situation arises. Also, the required approval mechanism leads to delay in the execution of customer orders. The Exchange believes that the concern addressed by current Rule 8.80(c)(7)(iii) is adequately addressed by CBOE Rule 6.73(a), which requires a Floor Broker handling an order, including a DPM, to use due diligence to execute the order at the best price or prices available to the Floor Broker, in accordance with the Rules. Thus, if a DPM were to initiate a transaction for its own account in order to disadvantage a customer by putting into effect a stop or stop limit order, the Exchange would have the ability to discipline the DPM for such activity under Rule 6.73 for failure to exercise due diligence with respect to the representation of the order.

2. Statutory Basis

The Exchange believes that the proposed rule change will improve the operation of the DMP trading system which, in accordance with Section 11A(a)(1)(C)(i) of the Act,[8] assures the economic and efficient execution of securities transactions. Accordingly, the Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[9] in general, and further the objectives of Section 6(b)(5)[10] in particular, in that it is designed to remove impediments to and perfect the mechanism of a free and open market.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 25049. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–98–15 and should be submitted by June 25, 1998.

[8] 15 U.S.C. 78kk-1(a)(1)(C)(i).

[9] 15 U.S.C. 78f.

[10] 15 U.S.C. 78f(b)(5).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–14778 Filed 6–3–98; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40045; File Nos. SR–DTC–98–09, SR–NSCC–98–05]

Self-Regulatory Organizations; The Depository Trust Company; National Securities Clearing Corporation; Notice of a Proposed Rule Change Relating to Direct Clearing Services and New York Window Services

May 29, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on May 13, 1998, The Depository Trust Company (''DTC'') and the National Securities Clearing Corporation filed with the Securities and Exchange Commission (''Commission'') proposed rule changes as described in Items I, II, and III below, which Items have been prepared primarily by DTC and NSCC. The Commission is publishing this notice to solicit comments from interested persons on the proposed rule changes.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Changes

Under the proposed rule changes, NSCC will discontinue providing its Direct Clearing Services (''Direct Clearing'') and New York Window Services (''Window''). DTC will begin to offer its participants most of the services currently offered by NSCC through Direct Clearing and the Window and will call the service the ''New York Window Services.''

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

In its filing with the Commission, DTC and NSCC included statements concerning the purpose of and basis for the proposed rule changes and discussed any comments they received on the proposed rule changes. The text of these statements may be examined at the places specified in Item IV below. DTC and NSCC have 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 Changes

Direct Clearing is a physical securities processing service which NSCC has provided since its inception to NSCC participants that do not have offices in New York City. The principal services of Direct Clearing include (i) processing of over-the-window receives and deliveries, (ii) processing transfers of physical securities certificates, and (iii) processing deliveries to designated agents in connection with reorganizations and other corporate actions. In the course of providing these and other Direct Clearing services, NSCC may have custody of participants' physical securities certificates including overnight custody for one or more days.[3]

The Window was originally approved by the Commission as a pilot project for NSCC in 1993[4] and became a permanent service in 1994.[5] The principal services of the Window are similar to those of Direct Clearing, but they initially were provided to NSCC participants located in New York City. NSCC organized the Window in order to centralize redundant services provided at many of its participants' offices that were based in New York City.

NSCC has proposed to discontinue providing Direct Clearing and the Window in order to focus its resources on the core businesses of NSCC. The proposed arrangements between NSCC and DTC should assist in eliminating redundant services and facilities and thereby should result in greater efficiencies while offering the current users of Direct Clearing and the Window the ability to receive similar services from DTC.

Under the proposals, DTC will adopt new procedures for the operation of its New York Window Services.[6] DTC's proposed procedures are substantially the same as NSCC's Rule 31[7] except that DTC's proposed procedures do not include provisions similar to section 4 of NSCC Rule 31, which relates to money settlement through the Window. Currently, it is anticipated that NSCC will discontinue providing Direct Clearing and the Window and DTC will begin offering its New York Window Services on July 10, 1998.

DTC and NSCC believe that the proposed rule changes are consistent with the requirements of Section 17A of the Act[8] and the rules and regulations thereunder because the proposed arrangements should provide for more efficient clearing and depository services and thereby should facilitate the prompt and accurate clearance and settlement of such transactions. In addition, DTC believes that the proposed rule changes will be implemented consistently with its obligation under Section 17A to safeguard securities and funds in its custody and control or for which it is responsible.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The proposed arrangements would impose no burden on competition. Securities depositories registered under Section 17A of the Act are utilities created to serve members of the securities industry for the purpose of providing certain services that are ancillary to the businesses in which industry members compete with one another.

After consummation of the proposed arrangements between DTC and NSCC, securities industry members will continue to have access to high-quality, low-cost depository services provided under the mandate of the Act.

(C) Self-Regulatory Organizations' Statement on Comments on the Proposed Rule Changes Received from Members, Participants or Others

Written comments from DTC participants, NSCC participants, and others have not been solicited or received. NSCC and DTC have worked closely, however, with a users' group composed of many of the users of Direct Clearing and the Window in evaluating and planning the proposed transaction.

[11] 17 CFR 200.30–3(a)(1).

[1] 15 U.S.C. 79s(b)(1).

[2] The Commission has modified the text of the summaries prepared by DTC and NSCC.

[3] For a more complete description of Direct Clearing, refer to Securities Exchange Act Release No. 32221 (April 26, 1993), 58 FR 26570 [File No. SR–NSCC–93–03].

[4] Securities Exchange Act Release No. 31861 (February 16, 1993), 58 FR 9582 [File No SR–NSCC–93–03].

[5] Securities Exchange Act Release No. 34629 (September 9, 1994), 59 FR 46680 [File No. SR–NSCC–94–12].

[6] DTC's proposed procedures are attached as Exhibit 2 to DTC's filing which is available for inspection and copying at the Commission's public reference room and through DTC.

[7] The current version of NSCC Rule 31 was approved by the Commission in 1996. Securities Exchange Act Release No. 37631 (September 3, 1996), 61 FR 47534 [File No. SR–NSCC–96–08].

[8] 15 U.S.C. 78q–1.

III. Date of Effectiveness of the Proposed Rule Changes 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 or NSCC consents, the Commission will:

(A) By order approve such proposed rule changes or

(B) Institute proceedings to determine whether the proposed rules change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule changes are consistent with the Act. 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 changes that are filed with the Commission, and all written communications relating to the proposed rule changes 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 and NSCC. All submissions should refer to File Nos. SR–DTC–98–09 and SR–NSCC–98–05 and should be submitted by June 25, 1998.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–14829 Filed 6–3–98; 8:45 am]

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[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40042; File No. SR–OCC–98–03]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Proposed Rule Change Relating to the Stock Loan/Hedge Program

May 28, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on April 13, 1998, The Options Clearing Corporation (''OCC'') 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 OCC. 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 Term of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to amend OCC's By-Laws and Rules governing OCC's stock loan/hedge program (''hedge program'') under which OCC operates a centralized facility for administering stock loan and stock borrow transactions between OCC clearing members.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC 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. OCC 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

1. Overall Purpose

In general, the purpose of the proposed rule change is to make comprehensive amendments to OCC's By-Laws and Rules that govern the hedge program. Clearing members that are approved to participate in the hedge program are referred to as ''hedge clearing members.'' A clearing member that lends stock through the hedge program is referred to as a ''lending clearing member,'' and a clearing member that borrows stock is referred to as a ''borrowing clearing member.'' Stocks that are eligible for the hedge program are referred to as ''eligible stocks.''

2. Summary of Primary Changes in Program

(i) Stock Loan Initiation. Currently under the hedge program, a stock loan is initiated when two hedge clearing members agree on the terms of the loan, the lending clearing member transfers the stock to OCC's account at a ''correspondent depository'' (*i.e.*, a securities depository at which OCC has an account), OCC directs the correspondent depository to redeliver the stock to the borrowing clearing member against payment of the required collateral amount to OCC, and OCC pays over the required collateral amount to the lending clearing member.

Under the revised hedge program, OCC will have no involvement in a stock loan until after the clearing members that are parties to the stock loan have completed the transaction between themselves through the facilities of The Depository Trust Company (''DTC''). Upon receiving notice of the stock loan from DTC, OCC will verify the accuracy of the clearing members' account numbers and the information supplied to OCC with respect to the transaction. If this information is verified, OCC will accept the loan into the hedge program. Upon acceptance (and only upon acceptance) by OCC, the stock loan contract between the stock lender and the stock borrower will be replaced by two parallel contracts with congruent terms: one between the stock lender and OCC as stock borrower and one between the stock borrower and OCC as stock lender. If OCC rejects a transaction, the transaction will remain in effect between the lending clearing member and the borrowing clearing member but outside the hedge program.

(ii) Universe of Eligible Stocks. Currently, the only stocks eligible for the hedge program are stock that are the underlying stocks for stock option contracts. Under the proposed rule change, all equity securities that are eligible for deposit at DTC will be eligible for the hedge program (other than any stock as to which OCC has made a determination pursuant to Section 2(c) of Article XXI of its By-Laws to terminate all outstanding stock loans relating to that stock).

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by OCC.

(iii) Margin-Ineligible Stock Loan and Borrow Positions. Under the current hedge program, all stock loan and stock borrow positions are taken into account in calculating each clearing member's obligation to deposit ''additional margin'' with OCC[3] and may generate either an increased additional margin requirement (if the stock loan or borrow positions do not hedge other positions of the clearing member) or a reduced additional margin requirement (if the stock loan or borrow positions do hedge other positions of the clearing member).

Under the proposed rule change, a clearing member will be able to designate one or more of its accounts with OCC as ''margin-ineligible.'' If an account is designated as margin-ineligible, OCC will not include any stock loan and stock borrow positions carried in that account in the calculation of the clearing member's additional margin obligations. Instead, OCC will rely on the other elements of its protection and back-up systems (primarily its clearing fund and its concentration monitoring surveillance system) to mitigate the risk to OCC created by those positions.[4]

(iv) Stock Loan and Borrow Baskets. Under the proposed rule change, a clearing member will be able to instruct OCC to treat specified stock loan positions in an account as constituting a ''stock loan basket'' and may instruct OCC to treat specified stock borrow positions in an account as constituting a ''stock borrow basket.'' Stock loan baskets and stock borrow baskets will be subject to margin under OCC's Rule 602.[5] The current hedge program has no provisions for stock loan and borrow baskets.

(v) Stock Loan Termination. Under the proposed rule change, the process for terminating stock loans will parallel the changes to the process for initiating stock loans. Under the current hedge program, a stock loan is terminated when the borrowing clearing member transfers the stock to OCC's account at the correspondent depository, OCC directs the correspondent depository to redeliver the stock to the lending clearing member against payment of the collateral amount to OCC, and OCC pays the collateral amount over to the borrowing clearing member. Under the proposed rule change, a stock loan will be terminated when the borrowing clearing member transfers the stock directly to the account of the lending clearing member at DTC against payment of the collateral amount to the DTC account of the borrowing clearing member.

3. Section-by-Section Discussion

In Article I of OCC's By-Laws, the definition of the term ''eligible stock'' will be revised to include all equity securities that are eligible for deposit at DTC. The terms ''margin-eligible,'' ''margin-ineligible,'' ''stock borrow basket,'' and ''stock loan basket'' will be defined for the purposes described above.

Article VIII of OCC's By-Laws will be amended to include the stock loan basket and stock borrow basket concepts in OCC's clearing fund. OCC's clearing fund is comprised of a ''stock clearing fund'' and a ''non-equity securities clearing fund.'' Clearing members' contributions to each are based upon the members' equity option margin requirements under rule 601 and members' NEO margin requirements under Rule 602. As discussed above, stock loan and borrow baskets will be subject to margin in OCC's NEO margin system. Therefore, stock loan and borrow baskets will be taken into account in determining clearing members' contributions to the non-equity securities clearing fund. If OCC were ever to suffer a loss attributable to stock loan or borrow baskets, OCC's first recourse to the clearing fund would be to the non-equity securities clearing fund.

The definitions in Article XXI, Section 1 of the By-Laws will be revised primarily to accommodate the revisions to the manner in which stock loans are initiated. The definitions of the terms ''collateral'' and ''loaned stock'' will be revised to reflect that the loaned stock and collateral will no longer be passed through OCC's account at DTC. The definition of ''correspondent depository'' will be deleted and replaced with the new term ''depository.'' The term ''stock loan business day'' will be defined as a day on which OCC and DTC are both open for business, and this term will be used in the Rules describing stock loan settlement procedures.

Article XXI, Section 2 of the By-Laws will be amended to reflect the revised manner in which stock loans are initiated, as described above. An interpretation will be added to section 2 to address certain situations in which the termination of a stock loan is reported to OCC at a settlement price (*i.e.,* reflecting payment by the lending clearing member of an amount of collateral) which is not consistent with OCC's records. A similar interpretation will be added to Rule 2209 (currently Rule 2208) to address situations in which OCC receives a report of the termination either of a purported stock loan which does not exist on OCC's records or of a stock loan on OCC's records in a quantity which does not match the quantity in the termination report. OCC anticipates that both of these types of situations will be extremely unusual. However, they are theoretically possible because OCC will receive reports of terminations of stock loans only after the transactions are final on DTC's books. OCC's records will be dispositive in both of these types of situations, and OCC will not accept any responsibility for reconciling the discrepancy between its records and those of the affected clearing members.

Paragraph (d) in Article XXI, Section 5 will be deleted. This paragraph currently limits the stock loan and borrow positions that may be maintained in a stock market-maker's or stock specialist's account to positions relating to the stock for which the stock market-maker or stock specialist acts as stock market-maker or stock specialist. Article VI, Section 3(f) of OCC's By-Laws restricts the options transactions which may be conducted in a stock market-maker's or stock specialist's account to those in options on underlying stocks for which the stock market-maker or specialist acts as market-maker or specialist. Section 5(d) of Article XXI was intended to extend that restriction to stock loan and borrow positions. However, the purpose of the Article VI, Section 3(f) restriction is to

[3] Under the current hedge program, a hedge clearing member is required to deposit margin with OCC to cover OCC's risk that the market will move against the member's stock loan and borrow positions during a day and that the member will fail before making the required mark-to-market payment on the next business day. Under the proposed rule change, a hedge clearing member will continue to be required to deposit margin with OCC but only with respect to ''margin-eligible'' stock loan and borrow positions. This margin is analogous to the ''additional margin'' that OCC requires with respect to short stock option positions, and therefore it is referred to in OCC's rules and in this notice as ''additional margin.''

[4] Under the proposed rule change, lending and borrowing clearing members will continue to be required to pay or be entitled to daily mark-to-market payments to adjust the collateral held by lending clearing members with respect to all stock loans. The purpose of additional margin is to protect OCC from the risk of an adverse market move between mark-to-market payments. OCC has concluded that the other elements of its protection and back-up systems should be adequate to protect it against this risk with respect to margin-ineligible stock loan and borrow positions. Margin-ineligible stock loan and borrow positions will be taken into account in determining the clearing fund contributions of hedge clearing members even though they will not be taken into account in margin calculations.

[5] OCC Rule 602 describes the calculation of margin requirements for securities which are neither equity securities nor based on equity securities. This margin system is sometimes referred to as OCC's ''NEO'' or ''non-equity option'' margin system.

facilitate surveillance of stock market-makers' and specialists' trading activity conducted in those accounts.[6] Stock loan and borrow positions are created by hedge clearing members and not by the stock market-maker or specialist for which a stock-market maker's or specialist's account is established. Therefore, the paragraph (d) restriction is irrelevant to the surveillance purpose of the Article VI, Section 3(f) restriction. OCC believes that a hedge clearing member should be permitted to carry a stock loan or borrow position relating to a particular stock in a stock-market maker's or specialist's account that is restricted to options transactions in a different stock if the clearing member wishes to do so.

A new paragraph (b)(12) will be added to Rule 601 to state that margin-ineligible stock loan and borrow positions will not be taken into account in determining a clearing member's margin requirements. Rule 601(c) will be revised to state that additional margin on margin-eligible stock loan and borrow positions will be based only on the ''net'' stock loan or borrow position in an account in a manner analogous to the method that OCC uses for options.[7] Interpretation .06 to Rule 601 will be deleted because OCC has determined that it is unnecessary to have a special rule for the ''margin interval'' [8] to be used for stock loan and borrow positions maintained in an account in which no options in the same class group are being maintained.

Rule 602 will be amended to incorporate references to stock loan baskets and stock borrow baskets. The definition of ''class group'' in paragraph (b)(2) will be amended to state that OCC will treat any stock loan basket or stock borrow basket defined by a clearing member as within the class group identified by the clearing member even if the stock loan or borrow positions comprising the basket do not replicate the composition or weighting of the index group for the class group and even if the stocks underlying the identified stock loan or borrow positions are not even included in the index group. However, a stock loan or borrow basket that does not meaningfully replicate the composition and weighting of the index group for a class group will be subject to a very large haircut when OCC takes the basket into account in determining the additional margin requirement for the class group.[9] OCC has developed the systems capacity to be able to analyze customized portfolios and assign appropriate haircuts to them on a large-volume, overnight basis. OCC believes that enabling hedge clearing members to use stock loan and borrow positions in OCC's NEO margin system will offer OCC additional margin in a desirable form because the assets, unlike cash, government securities, and letters of credit, will ''co-vary'' to some degree with the clearing members' short option positions on the opposite side of the market. In addition, including stock loan and borrow positions as offsets in the NEO system will allow clearing members to reduce their net additional margin requirements.

Changes will be made to the definitions of ''marking price'' in Rule 602(b)(6) and ''margin interval'' in Rule 602(b)(8) to extend these concepts to stock loan and borrow baskets. A new sentence will be added to Rule 602(c)(1)(ii)(A) to state that if a clearing member defines two or more stock loan baskets or two or more stock borrow baskets in an account as within the same class group, OCC will take each basket into account separately, and calculate a ''haircut'' for each separately in determining additional margin for the class group.

A new sentence will be added to Rule 602(c)(1)(ii)(B) to reflect that the daily mark-to-market payments between lending and borrowing clearing members that are described in Rule 2204 (currently Rule 2203) are the functional equivalent of premium margin deposited with OCC with respect to short option positions. Changes to Rule 602(c)(1)(C) will extend the description of the calculation of additional margin in the NEO margin system to stock loan and borrow baskets. Changes to Rules 602(d) and (e) will extend those provisions to stock loan and borrow baskets. A new Rule 602(f)(8) will describe the way that OCC will proceed in certain special circumstances in which a hedge clearing member reduces or terminates a stock loan or borrow position which is completely or partly included in a stock loan basket or stock borrow basket. Interpretations .06 and .07 to Rule 602 will be modified to extend them to stock loan and borrow baskets.

Rule 1001 will be amended to describe the way that stock loan and borrow baskets will be taken into account in determining hedge clearing members' contributions to the stock clearing fund and the non-equity securities clearing fund. These changes will parallel the changes to Article VIII of the By-Laws.

Rule 1104 will be amended to delete a phrase that currently states that if a hedge clearing member is suspended the proceeds from the closing out of stock loan positions and stock borrow positions in the clearing member's customers' account will be subject to the special accounting for customer funds that is described in the Rule. Proceeds from the closing out of stock loan positions and stock borrow positions are correctly characterized as funds of the clearing member and not funds of the clearing member's customers because stock loan and borrow positions (even those that are carried in a customers' account so that they can provide additional margin offsets in that account) are correctly characterized as positions of the clearing member and not positions of the clearing member's customers.[10]

A new Rule 2201 will be added to OCC's rules. Rule 2201(a) will describe the standing instructions regarding the hedge program that a hedge clearing member will be expected to maintain with OCC. Rule 2201(b) will describe situations under which a hedge clearing member may provide OCC specific instructions that override the clearing member's standing instructions.

Rule 2201(a)(iv) will require a hedge clearing member to provide OCC with a standing instruction as to the account from and to which the clearing member wishes its net daily mark-to-market payments to be made. The rule will state that the clearing member may specify either its firm account or its combined market-makers' or specialists' account for this purpose. OCC believes that funds deposited as collateral by a borrowing clearing member with a lending clearing member to secure its obligation to return the loaned stock do not constitute funds of the customers of

[6] Securities Exchange Act Release No. 22692 (December 6, 1985), 50 FR 50882 [File No. SR–OCC–85–15].

[7] Rule 601 currently provides that additional margin calculations are based in part on the ''gross'' stock loan and borrow positions of a hedge clearing member (*i.e.*, without regard to whether a position on the other side of the market was carried in the account). OCC has concluded that requiring additional margin on the gross positions leads to over-margining and is an unnecessary disincentive for clearing members to use the hedge program.

[8] ''Margin interval'' is the maximum daily change in the marking price of the underlying security, upwards or downwards, assumed by OCC for purposes of calculating additional margin.

[9] OCC's authority to determine haircuts is set forth in OCC Rule 602(c)(1)(ii)(C)(1).

[10] The interests of the clearing member's customers are nonetheless protected because the clearing member is required under Rule 15c3–3 of the Act, 17 CFR 240.15c3–3, to include in its calculations of the amount which it is required to maintain on deposit in its Reserve Bank Account ''Monies borrowed collateralized by securities carried for the account of customers'' (Item 2) and ''Monies payable against customers' securities loaned'' (Item 3). This subject is discussed in Securities Exchange Act Release No. 39738 (March 10, 1998), 63 FR 13082 [File No. SR–OCC–97–11].

either the lending clearing member or the borrowing clearing member regardless of the accounts in which stock loan and stock borrow positions are carried. OCC believes that funds paid to adjust the collateral also do not constitute customer funds and therefore that cross-account netting of mark-to-market payments is appropriate and permissible.

Rule 2202 (currently rule 2201) will be rewritten to describe the new stock loan initiation process, and in particular to reflect the elimination of any role of an OCC account at DTC in the stock loan initiation process. Rule 2202(c) (currently Rule 2201(e)) will be revised to state that the sole obligation of the lending clearing member with respect to the collateral which it holds shall be to ''act as agent for [OCC] in repaying an amount equal to the Collateral * * *, or in otherwise disposing of the Collateral in such other manner as the Corporation may direct in the event that the Borrowing Clearing Member has been suspended pursuant to Chapter XI of the Rules, if and when the Stock Loan is terminated as provided in the Rules.'' This language parallels new language in Rule 2208(c) which says that the actions of the borrowing clearing member to terminate a stock loan ''shall be undertaken as [OCC's] agent, and [OCC] shall have the authority to instruct the Borrowing Clearing Member to proceed in another manner in the event that the Lending Clearing Member has been suspended pursuant to Chapter XI of the Rules.''

In each case, this language is intended to give OCC, if it must suspend a hedge clearing member, the express authority to instruct each hedge clearing member on the other side of the suspended clearing member's stock loans not to use the ordinary stock loan termination procedures but instead to use the collateral to buy in the loaned stock (if the suspended clearing member is the borrowing clearing member) or to sell out the loaned stock and apply the proceeds to the repayment of the collateral (if the suspended clearing member is the lending clearing member). These statements of express authority are necessary because under the revised process for terminating stock loans when neither hedge clearing member has been suspended, the borrowing clearing member and the lending clearing member will return the loaned stock and the collateral directly to each other's DTC account rather than to OCC's DTC account. In the absence of this expressly stated authority to instruct hedge clearing members that have not been suspended to proceed in another manner, it might be difficult under the revised hedge program for OCC to control the disposition of assets held by clearing members on the other side of stock loans from the suspended clearing member.

Changes will be made to Rule 2203 (currently Rule 2202) to reflect the fact that a hedge clearing member may declare its stock loan and borrow positions margin-ineligible. The calculation of margin deposited with OCC margin for stock loan and borrow baskets will be described in Rule 602.

Rule 2204 (currently Rule 2203) will be amended to provide for the netting across all of a hedge clearing member's accounts of the mark-to-market payments due to and from the clearing member with respect to the clearing member's stock loan and stock borrow positions on each business day. OCC believes that the changes in Rule 2204 are appropriate for the same reason that underlies the changes in Rule 1104 described above. Namely, that funds deposited as collateral by a borrowing clearing member with a lending clearing member to secure its obligation to return the loaned stock do not constitute funds of the customers of either the lending clearing member or the borrowing clearing member regardless of the accounts in which stock loan and stock borrow positions are carried. OCC believes that funds paid to adjust the collateral also do not constitute customer funds and therefore that cross-account netting of mark-to-market payments is appropriate and permissible.

OCC will specify in Rule 2201(a)(iv) that a hedge clearing member may process the net daily payment to or from the hedge clearing member only through its firm account or its combined market-makers' or specialists' account. This requirement will eliminate any possibility that a net mark-to-market payment due from a hedge clearing member to OCC (which does not constitute customer funds) will be netted against funds such as premiums being paid to writers of options which are due from OCC to the hedge clearing member's customers' account (and which do constitute customer funds).

Rules 2208 and 2209 (currently Rules 2207 and 2208, respectively) will be rewritten to reflect the changes in the procedures for terminating stock loans that are described above.

Rule 2210(a) [currently Rule 2209(a)] will be rewritten to state that if DTC suspends one of the parties to a stock loan prior to the time at which OCC would have otherwise accepted a stock loan into the hedge program, OCC will not accept the stock loan. The rule also will state that OCC will accept any stock loan which complies with the completeness and accuracy requirements of Rule 2202(b) even if OCC suspends one of the hedge clearing members which is a party to the stock loan prior to the time at which OCC accepts the stock loan.

Rule 2210(b) [currently Rule 2209(b)] will be rewritten for two purposes: (1) To clarify that OCC contemplates that the buy-in and sell-out procedures described in Rule 2211 (currently rule 2210) generally will be used to close out the stock loan and borrow positions of a suspended clearing member unless OCC determines that another manner of proceeding is more appropriate in the circumstances and (2) to eliminate language that states that proceeds of stock loan and borrow positions carried in market-maker and specialist accounts will be accounted for separately. The reason for these changes is the same as the reason for the changes in Rule 1104 described above. Namely, that stock loan and borrow positions, regardless of the account in which they are carried, are properly characterized as position of the hedge clearing member and not positions of the market-maker or specialist for whom the account is established.

Old Rule 2210(c) [currently rule 2209(c)] will be deleted because OCC has concluded that it would be unlikely ever to match up stock, loan and borrow positions of hedge clearing members that were formerly counter-parties of a suspended clearing member in the manner described in the rule.

The only substantive change in Rule 2221 (currently Rule 2210) will be to eliminate references to the separate treatment of stock loan and borrow positions carried in market-maker and specialist accounts. The reason for eliminating this separate treatment is described above in the discussion of Rule 2210(b).

4. Statutory Basis for the Proposed Rule Change

OCC believes that the proposed rule change provides for the enhancement of the hedge program in a number of ways that should increase the attractiveness of the hedge program to the stock lending community and thereby lead to increased use of the hedge program. Because OCC believes that its hedge program facilitates the prompt and accurate clearance and settlement of stock loans and provides enhanced safeguarding of related securities and funds, OCC believes that the proposed rule change is consistent with the requirements of the Section 17A of the

Act[11] and the rules and regulations thereunder. In addition, OCC believes that the hedge program reduces exposure to counterparty default by allowing for the substitution of OCC's AAA credit rating for that of each stock loan counterparty, by using increased payment netting, by reducing duplicative collateralization requirements, and by applying advanced clearing and risk management systems to the stock loan market. OCC therefore believes that the proposed changes are consistent with the purposes and requirements of the Act.

(B) Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change, and none have been 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 OCC 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, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that bare filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing also will be available for inspection and copying at the principal office of OCC. All submissions should refer to File No. SR–OCC–98–03 and should be submitted by June 25, 1998.

For the Commission by the Division of Market Regulations, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–14830 Filed 6–3–98; 8:45 am]

BILLING CODE 8010–01–M

[11] 15 U.S.C. 78q-1.

[12] 17 CAR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40044; File No. SR–PCX–98–24]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Relating to the Elimination of Suffixes Designating Tier II Equity Securities

May 29, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 11, 1998, the Pacific Exchange, Inc. (''PCX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. 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 PCX is proposing to eliminate its current practice of affixing a suffix to the ticker symbol for certain PCX equity securities. This practice is currently performed for the purpose of designating equity securities that are listed pursuant to the Exchange's Tier II requirements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, PCX 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. PCX has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On July 22, 1994, the Commission approved an Exchange proposal to modify its equity listing and maintenance criteria by adopting a ''two-tiered'' structure. While the creation of two tiers resulted in a new higher tier (Tier I), the Exchange did not change its existing listing standards (which became Tier II) or otherwise create a lower tier of listing standards. In its approval order, the Commission reiterated a statement from the Exchange's filing regarding Tier II securities (*i.e.*, securities of smaller companies with limited commercial operations, lower capitalization, and a lack of demonstrated earnings history) that:

> ''Transactions in Tier II [securities] will be identified by a special suffix to the ticker symbol so that these securities can be distinguished from other securities traded on the Exchange. The suffix will not be applied, however, to a security listed on either the NYSE, Amex, or NASDAQ/NMS even though it is designated by the Exchange as a Tier II security.'' (Exchange Act Release No. 34429 (July 22, 1994), 59 FR 38998, 38999 (August 1, 1994).

The Exchange currently complies with this requirement by disseminating a ticker symbol with a ''TT'' suffix for Tier II securities. This is sent to vendors so that they can identify quotes and transactions in Tier II securities. But the Exchange now believes that it would be appropriate and expedient to discontinue this practice and to eliminate the use of the ''TT'' suffix for Tier II securities for the following reasons:

- Different data vendors are currently using different practices in displaying the Exchange's ''TT'' suffix. Some display them in reporting quotes and trades. Others include them only in their symbol books, and do not include

them in reporting quotes and trades. Thus, for example, if ''XYZ'' were traded only on the PCX, it might appear to an investor accessing information from different vendors that ''XYZ'' and ''XYZTT'' were two different securities.

• Use of the suffix can also lead to investor confusion over the correct symbol for the same security traded on two exchanges. For example, if the PCX trades a Tier II security designated as ''XYZTT'' and another exchange trades the same issues as ''XYZ'' (or ''XYZT2''), vendors and other organizations will generally include both symbols in their databases as if they were different securities. Most vendors segregate symbols based on difference in the characters comprising the trading symbol. This causes bifurcation of quote and trade information, and consequently, investors received inaccurate information on quotes and trades.

• The use of the suffix is cumbersome, particular for PCX floor members (specialists and floor brokers), who have requested relief from what they believe to be an unnecessarily complicated designation that fails to serve a useful purpose.

• Investors may also incorrectly assume that the ''TT'' suffix designates a related, secondary security, such as preferred stock of the same company, if quotes and trades of two related symbols (such ''XYZ'' and ''XYZTT'') are being disseminated either by different vendors or disseminated as separate issues by the same vendor.

• The current method of identifying PCX second-tier securities places the Exchange at a competitive disadvantage. Currently, when issues are listed on both a regional exchange and Nasdaq, different symbols must be used for each marketplace. Adding a suffix to a regional exchange's symbol creates the potential for investor confusion and quote fragmentation.

• A better alternative to the ''TT'' suffix is available. Second tier securities can be specifically identified by the vendors. Additionally, second tier securities can be designated in vendors' quote displays with a special indicator next to the figure for volume traded (or other location on the screen). Investors will see the indicator when they display quote or trade information. The Exchange is aware that one vendor uses this method for distinguishing between Nasdaq SmallCap securities (designated with an ''S'') and Nasdaq NM securities (designated with a ''Q'') in its symbol book. The Exchange also believes, based on discussions with several data vendors, that this practice (or a similar one) could be employed by all data vendors.

The Exchange believes that the proposed solution is far superior to the current practice of adding a ''TT'' suffix to every Tier II security. To implement this solution, the Exchange would simply notify vendors of those securities that are Tier II equity securities. Nasdaq currently uses a similar method to distinguish between National Market securities and SmallCap securities. Vendors already have systems and codes in place for processing, disseminating, and displaying information on the specific sub-marketplace of an issue at the listing exchange or association.

The Exchange originally intended the use of ''TT'' suffix to be educational to investors, broker-dealers, vendors, and others. But now, after over three years of diligently using the suffix, it appears that its informative value is minimal and, in many instances, is likely to lead to confusion, errors and dissemination of inconsistent information.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the provisions of Section 6(b)[3] of the Act, in general, and Section 6(b)(5),[4] in particular, in that it is 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 promote just and equitable principles of trade.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; (3) does not become operative for 30 days from May 11, 1998, the date on which it was filed, and the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date, it has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(e)(6) thereunder.[5] At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, otherwise in furtherance of the purposes of the Act.[6]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. 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 persons, 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 the PCX. All submissions should refer to File No. SR–PCX–98–24 and should be submitted by June 25, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–14828 Filed 6–3–98; 8:45 am]

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[3] 15 U.S.C. 78f(b).

[4] 15 U.S.C. 78f(b)(5).

[5] 15 U.S.C. 78s(b)(3)(A) and 17 CFR 240.19b–4(e)(6).

[6] In reviewing the proposal, the Commission has considered the proposal's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[7] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice No. 2929]

Secretary of State's Advisory Committee on Private International Law (ACPIL) Study Group on Electronic Commerce Meeting Notice and Request for Public Comments

The Department of State's Advisory Committee Study Group on Electronic Commerce will hold a meeting Friday, June 19 in Washington, D.C. from 9:30 a.m. to 4:30 p.m. The meeting will review international and national developments concerning computer-based authentication, signature and message integrity systems, and consider possible approaches to international rules and related domestic concerns.

The discussion will include developments at the United Nations Commission on International Trade Law (UNCITRAL); the OECD; proposed new uniform state laws in the U.S., including Uniform Commercial Code Article 2B and the Uniform Electronic Transactions Act; and other state and federal laws and regulations proposed or adopted. The Advisory Committee will also consider developments at the European Commission, the Science and Technology, Business, and International Law Sections of the American Bar Association, the National Conference of Commissioners on Uniform State Laws, the American Law Institute, and other organizations as appropriate.

In particular, two documents will be reviewed which will then be considered by UNCITRAL at the next meeting of its Working Group on Electronic Commerce in July 1998. These include (1) the recently revised ''Draft Uniform Rules on Electronic Signatures'' issued by the Secretariat, and (2) a proposal by the United States on a ''Draft International Convention on Electronic Transactions'' (U.N. Docs.A/CN.9/WG.IV/WP.76 and 77, dated 25 May, 1998).

Issues that may be reviewed by the Advisory Committee may include, but are not limited to, prior U.S. views urging international bodies to examine the various electronic authentication systems now available or emerging, to allow both technological and market developments to form the basis of any rules, in order to avoid unnecessary impediments to electronic commerce. Included will be a consideration of rules which can encompass both unregulated private sector systems, as well as governmentally regulated or licensed systems; whether rules for authentication or signature systems should distinguish between commercial and consumer transactions; possible rules on risk allocation, attribution and reliance; whether third party assurance providers, such as certifying authorities, should have to meet minimum levels of assurance; what role information security standards should play in this process; whether rules are needed on incorporation by reference; what types of rules for cross-certification between different countries are feasible; and other related issues. Jurisdictional issues will also be discussed as appropriate.

Participants may also wish to review the recently completed UNCITRAL Model Law on Electronic Commerce, which covers the legal effect and validity of computer messages in commercial transactions; functional equivalents of signatures, writings, etc.; attribution of messages; time and place where communications are deemed to have taken place; electronic bills of lading; and other matters.

The meeting is open to the public up to the capacity of the meeting room, and members of the public may participate subject to rulings of the Chair. The meeting will be held in Washington at the International Law Institute (ILI), at 1615 New Hampshire Avenue, N.W. Participants should register in advance since space may be limited. Please advise either the Office of Legal Adviser (L/PIL) at the State Department by calling Rosie Gonzales at (202) 776–8420, by fax at 776–8482, or by email to: pildb@his.com., or call Stuart Kerr, ILI Executive Director, at (202) 483–3036, or by fax at 483–3029.

Participants will receive the above-referenced documents by providing Ms. Gonzales with their email address, or alternatively by requesting paper copies. The office mailing address is: Office of the Legal Adviser (L/PIL), Suite 355, South Building, 2430 E Street NW, Washington, DC 20037–2800. Members of the public who cannot attend are welcome to request the documents and to comment on this topic.

Harold S. Burman,

Executive Director, Secretary of State's Advisory Committee on Private International Law.

[FR Doc. 98–14855 Filed 6–3–98; 8:45 am]

BILLING CODE 4710–08–M

DEPARTMENT OF STATE

[Public Notice 2831]

Bureau of Oceans and International Environmental and Scientific Affairs; Certifications Pursuant to Section 609 of Pub. L. 101–162

May 19, 1998.

SUMMARY: On May 1, 1998, the Department of State certified, pursuant to Section 609 of Pub. L. 101–162 (''Section 609''), that 16 nations have adopted programs to reduce the incidental capture of sea turtles in their shrimp fisheries comparable to the program in effect in the United States. The Department also certified that the fishing environments in 23 other countries do not pose a threat of the incidental taking of sea turtles protected under Section 609. Shrimp imports from any nation not certified were prohibited effective May 1, 1998 pursuant to Section 609.

EFFECTIVE DATE: June 4, 1998.

FOR FURTHER INFORMATION CONTACT: Hollis Summers, Office of Marine Conservation, Bureau of Oceans and International Environmental and Scientific Affairs, Department of State, Washington, DC 20520–7818; telephone: (202) 647–2337.

SUPPLEMENTARY INFORMATION: Section 609 of Pub. L. 101–162 prohibits imports of certain categories of shrimp unless the President certifies to the Congress not later than May 1 of each year either: (1) That the harvesting nation has adopted a program governing the incidental capture of sea turtles in its commercial shrimp fishery comparable to the program in effect in the United States and has an incidental take rate comparable to that of the United States; or (2) that the fishing environment in the harvesting nation does not pose a threat of the incidental taking of sea turtles. The President has delegated the authority to make this certification to the Department of State. Revised State Department guidelines for making the required certifications were published in the **Federal Register** on April 19, 1996 (61 FR 17342).

On May 1, 1998, the Department certified 16 nations on this basis: Belize, China, Colombia, Costa Rica, Ecuador, El Salvador, Guatemala, Guyana, Honduras, Indonesia, Mexico, Nicaragua, Panama, Suriname, Thailand, and Trinidad and Tobago. Brazil and Nigeria, certified on these grounds in 1997, did not retain their certifications. Brazil and Venezuela failed to demonstrate their regulations requiring the use of sea turtle excluder devices (TEDs) were being adequately enforced; Nigeria did not respond to requests that a U.S. team be allowed to visit its shrimp fleet.

The Department also certified 23 shrimp harvesting nations as having fishing environments that do not pose a danger to sea turtles. Sixteen nations have shrimping grounds only in cold waters where the risk of taking sea turtles is negligible. They are: Argentina, Belgium, Canada, Chile,

Denmark, Finland, Germany, Iceland, Ireland, the Netherlands, New Zealand, Norway, Russia, Sweden, the United Kingdom, and Uruguay. Seven nations only harvest shrimp using small boats with crews of less than five that use manual rather than mechanical means to retrieve nets, or catch shrimp in using other methods that do not threaten sea turtles. Use of such small-scale technology does not adversely affect sea turtles. The seven nations are: the Dominican Republic, Fiji, Haiti, Jamaica, Oman, Peru and Sri Lanka. The Bahamas and Brunei, certified on these grounds in 1997, were not certified this year after it was established that Bahamian waters do not have enough shrimp to support a commercial shrimp fishery and that Brunei's commercial fishery harvests appreciable quantities of shrimp using methods that could threaten sea turtles. Last year neither exported shrimp to the United States,

Any shipment of shrimp harvested in Brazil, Venezuela, Nigeria, the Bahamas or Brunei with a date of export therefrom prior to May 1, 1998 will be allowed entry into the United States regardless of date of importation into the United States. That is, shipments of shrimp harvested in these countries in transit prior to the effective date of the ban are not barred from entry.

The Department of State communicated the certifications under section 609 to the Office of Trade Operations of the United States Customs Service in a letter transmitted on May 1, 1998. The letter noted that the Department has informed U.S. importers and foreign nations that after May 1, 1997, the Exporter's/Importer's Declaration required to be submitted with all shrimp imports must be the latest version (OMB Approval No. 140–0095, expiration date 9–31–99). In addition, the United States Customs Service and foreign and domestic users of the DSP–121 form have been notified that, in accordance with a U.S. Court of International Trade order of October 8, 1996, shrimp harvested with TEDs in uncertified nations may not be imported into the United States and that exemption 7.2 on the DSP 121 is not valid until further notice.

Dated: May 19, 1998.

R. Tucker Scully,

Acting Deputy Assistant Secretary For Oceans.

[FR Doc. 98–14787 Filed 6–3–98; 8:45 am]

BILLING CODE 4710–09–M

TENNESSEE VALLEY AUTHORITY

Paperwork Reduction Act of 1995, as Amended by Public Law 104–13; Submission for OMB Review; Comment Request

AGENCY: Tennessee Valley Authority.

ACTION: Submission for OMB review; comment request.

SUMMARY: The proposed information collection described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended). The Tennessee Valley Authority is soliciting public comments on this proposed collection as provided by 5 CFR 1320.8(d)(1). Requests for information, including copies of the information collection proposed and supporting documentation, should be directed to the Agency Clearance Officer: Wilma H. McCauley, Tennessee Valley Authority, 1101 Market Street (WR 4Q), Chattanooga, Tennessee 37402–2801; (423) 751–2523.

Comments should be sent to OMB Office of Information and Regulatory Affairs, Attention: Desk Officer for Tennessee Valley Authority no later than July 6, 1998.

SUPPLEMENTARY INFORMATION:

Type of Request: Regular submission, proposal to extend without revision a currently approved collection of information (OMB control number 3316–0096).

Title of Information Collection: Customer Input Card for TVA Recreation Areas.

Frequency of Use: On occasion.

Type of Affected Public: Individuals or households.

Small Business or Organizations Affected: No.

Federal Budget Functional Category Code: 452.

Estimated Number of Annual Responses: 1,000.

Estimated Total Annual Burden Hours: 50.

Estimated Average Burden Hours Per Response: .05.

Need For and Use of Information: This information collection asks visitors to selected TVA public use areas to provide feedback on the condition of the facilities they used and the services they received. The information collected will be used to evaluate current maintenance, facility, and service practices and policies and to identify new opportunities for improvements.

William S. Moore,

Senior Manager, Administrative Services.

[FR Doc. 98–14862 Filed 6–3–98; 8:45 am]

BILLING CODE 8120–08–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Program Management Committee (PMC)

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 Program Management Committee (PMC) meeting to be held June 8, 1998, 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) Welcome and Introductions; (2) Review and Approval of Summary of the Previous Meeting; (3) Consider/Approve: a. Final Draft, DO–229A, Minimum Operational Performance Standards for Global Positioning System/Wide Area Augmentation System Airborne Equipment, RTCA Paper No. 094–98/PMC–009, prepared by Special Committee (SC)–159; b. Final Draft, Government/Industry Guidelines and Concept for National Airspace Analysis and Redesign, RTCA Paper No. 095–98/PMC–010, prepared by SC–192; c. Final Draft, Change 1, DO–215A, Guidance on Aeronautical Mobile Satellite Service (AMSS) End-to-End System Performance, RTCA Paper No. 096–98/PMC–011, prepared by SC–165; d. Nominations for a new chairman for SC–135, Environmental Testing; (4) Special Committee Issues: a. PMC Action Item 98–06, Chairman, SC–193, Terrain and Airport Data Bases (Update status of Terms of Reference; update status of whether the committee will be joint with EUROCAE Working Group (WG)–44; recommend whether to develop further the Ground Collision Avoidance System work done by EUROCAE WG–44); b. PMC Action Item 98–07, Chairman, SC–181, Navigation Standards (Provide PMC with a work plan and updated Terms of Reference to incorporate development of standards for Navigation Data Information on Moving Maps); c. PMC Action Item 98–14, Secretary, SC–165, Aeronautical Mobile Satellite Services (Request to task SC–165 with development of a minimum Aviation System Performance Standard for End-to-End Satellite Voice Services, RTCA Paper No. 092–98/

SC165–179); (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 http://www.rtca.org (web site). Members of the public may present a written statement to the committee at any time. Exceptional circumstances, due to an unanticipated delay in the administrative review and processing of the notice, exist in this instance to permit public notice this meeting in less than 15 days.

Issued in Washington, DC, on May 29, 1998.

Janice L. Peters,

Designated Official.

[FR Doc. 98–14886 Filed 6–3–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Intent to Rule on Application to Impose a Passenger Facility Charge (PFC) at Chicago O'Hare International Airport and to Use the Revenue at Chicago O'Hare International Airport and Chicago Midway Airport, Chicago, Illinois

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 a PFC at Chicago O'Hare International Airport and use the revenue at Chicago O'Hare International Airport and Chicago Midway 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 July 6, 1998.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Chicago Airports District Office, 2300 East Devon Avenue, Room 201, Des Plaines, Illinois 60018.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Ms. Mary Rose Loney, Commissioner, of the City of Chicago Department of Aviation at the following address: Chicago O'Hare International Airport, P.O. Box 66142, Chicago, Illinois 60666. Air carriers and foreign air carriers may submit copies of written comments previously provided to the City of Chicago Department of Aviation under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Philip M. Smithmeyer, Manager, Chicago Airports District Office, 2300 East Devon Avenue, Des Plaines, Illinois 60018, (847) 294–7335. 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 a PFC at Chicago O'Hare International Airport and use the revenue at Chicago O'Hare International Airport and Chicago Midway 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 April 20, 1998, the FAA determined that the application to impose and use the revenue from a PFC submitted by City of Chicago Department of Aviation 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 August 6, 1998.

The following is a brief overview of the application.

PFC application number: 98–08–C–00–ORD.

Level of PFC: $3.00.

Original charge effective date: September 1, 1993.

Revised proposed charge expiration date: April 1, 2018.

Total estimated PFC revenue: $605,305,000.00.

Brief description of proposed projects:

Impose Only at ORD: Relocated Northwest Tollway Connection; Explosive Blast Mitigation Phase II; Five Explosive Detection System Units; Concourse C Upgrade; Concourse B Upgrade; Concourse L Upgrade; Concourse K Upgrade; Concourse L Extension; Concourse H Upgrade; New Police Facility; Balmoral Drive Extension; I–190 Collector/Distributor; Acquire 12 Airport Transit System Vehicles; Bessie Coleman Bridge Rehabilitation; Airport Transit System Station at Rental Car Campus; Lake O'Hare Capacity Enhancement; Snow Dump Improvement; Runway 9L/27R Rehabilitation; Runway 18/36 Rehabilitation; Perimeter Intrusion Detection System; Runway 14L/32R Rehabilitation; Taxiway B Rehabilitation at C3/C4; Chilled Water Central Plant & Piping Network Study Implementation; High Temperature Water Piping; Elimination of Ball Joints; Chilled Water System Replacement of Chillers; South Cooling Tower Capacity Increase; H&R Plant Switchgear & Feeder Replacement; Airside Perimeter Road Rehabilitation/Construction.

Impose and Use at ORD: Interactive Computer Training System; Concourse F Extension; Terminal 1 Airside Connection and Concession Infill; Terminal 3 ATS Bridge; Concession Area Public Space Buildout; Explosive Blast Mitigation; Security Checkpoint Equipment; Two Explosive Detection System Units; Terminal 1 Elevator Expansion; Airport Maintenance Complex Addition; Upper Level Roadway Deck Rehabilitation; Acquire Three New Airport Transit System Vehicles; Airport Transit System Remote Station Escalator; Airport Transit System MIRA Computer Upgrade; Landslide Formulation; Bessie Coleman Drive Rehabilitation Phase II; Wetlands Relocation; Small Basin Stormwater Quality; Runway 14R/32L Rehabilitation; Taxiway T Extension Rehabilitation; Taxiway W Rehabilitation; GPS Antenna; Equipment Service Platforms at H&R Plant; H&R Formulation; 360 Degrees Tower Simulator; General Aviation Apron Pavement Rehabilitation; Military Site Airside Fencing; Acquisition of 1998 Security/Fire Equipment; NPDES Permit Compliance; Soil Erosion & Sedimentation Control.

Impose at ORD and Use at MDW: Midway Home Soundproofing.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: 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 City of Chicago Department of Aviation.

Issued in Des Plaines, Illinois on May 28, 1998.

Benito De Leon,

Manager, Planning/Programming Branch, Airports Division, Great Lakes Region.

[FR Doc. 98–14884 Filed 6–3–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Passenger Facility Charge (PFC) Approvals and Disapprovals

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Monthly Notice of PFC Approvals and Disapprovals. In April 1998, there were 13 applications approved. Additionally, two approved amendments to previously approved applications are listed.

SUMMARY: The FAA publishes a monthly notice, as appropriate, of PFC approvals and disapprovals 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). This notice is published pursuant to paragraph d of section 158.29.

PFC Applications Approved

Public Agency: New Hanover County Airport Authority, Wilmington, North Carolina.

Application Number: 98–03–C–00–ILM.

Application Type: Impose and use a PFC.

PFC Level: $3.00

Total PFC Revenue Approved in This Decision: $8,179,319.

Earliest Charge Effective Date: June 1, 1998.

Estimated Charge Expiration Date: May 1, 2014.

Class of Air Carriers Not Required To Collect PFC's:

(1) Air taxi/commercial operators and (2) large certificated route air carriers filing Research and Special Programs Administration Form T–100 having less than 1,000 annual enplanements at Wilmington International Airport.

Determination: Approved. Based on the information contained in the public agency's application and a January 30, 1998, letter, the FAA has determined that each proposed class accounts for less than 1 percent of the total annual enplanements at Wilmington International Airport.

Brief Description of Projects Approved for Collection and Use:

Construct new equipment building.

Airfield drainage system rehabilitation.

Develop daylight/limited use taxiway.

Brief Description of Projects Partially Approved for Collection and Use: Land acquisition.

Determination: Partially approved. The land acquisition in the approaches to runways 17 and 24 is not PFC eligible at this time. The runway extensions which would necessitate additional approach land acquisitions have not been adequately justified. In addition, all environmental reviews for these acquisitions have not been completed. Therefore, the public agency cannot certify compliance with § 158.25(c)(1)(ii)(B) for these elements.

Establish a 1,000-foot safety area at 35 end of current instrument landing system runway 17/35.

Determination: Partially approved. The design and construction of the safety area were not approved as all environmental reviews of those elements have not been completed yet. Therefore, the public agency cannot certify compliance with § 158.25(c)(1)(ii)(B) for these elements.

Decision Date: April 2, 1998.

For Further Information Contact: Terry R. Washington, Atlanta Airports District Office, (404) 305–7143.

Public Agency: Craven Regional Airport Authority, New Bern, North Carolina.

Application Number: 98–02–U–00–EWN.

Application Type: Use PFC revenue.

PFC Level: $3.00.

Total PFC Revenue To Be Used in This Decision: $10,303,898.

Charge Effective Date: February 1, 1997.

Estimated Charge Expiration Date: May 1, 2022.

Class of Air Carriers Not Required To Collect PFC'S: No change from previous decision.

Brief Description of Projects Approved for Collection and Use:

Terminal development—phase II.

Air carrier apron.

Access road.

Decision Date: April 3, 1998.

For Further Information Contact: Terry Washington, Atlanta Airports District Office, (404) 305–7143.

Public Agency: City of Worcester, Worcester, Massachusetts.

Application Number: 98–03–C–00–ORH.

Application Type: Impose and use a PFC.

PFC Level: $3.00

Total PFC Revenue Approved in This Decision: $393,556.

Charge Effective Date: October 1, 1992.

Charge Expiration Date: October 1, 1997.

Class of Air Carriers Not Required to Collect PFC's: None.

Brief Description of Projects Approved for Collection and use:

Runway 11/29 drainage improvements and permanent erosion control measures.

Purchase snow removal equipment.

Professional services.

Decision Date: April 8, 1998.

For Further Information Contact: Priscilla Scott, New England Regional Airports Division, (781) 238–7614.

Public Agency: Reading Regional Airport Authority, Reading, Pennsylvania.

Application Number: 97–03–C–00–RDG.

Application Type: Impose and use of a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in This Decision: $1,300,000.

Earliest Charge Effective Date: July 1, 1998.

Estimated Charge Expiration Date: July 1, 2008.

Class of Air Carriers Not Required to Collect PFC'S:

Air taxi/commercial operators filing FAA Form 1800–31.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Reading Regional Airport.

Brief Description of Projects Approved for Collection and Use:

Renovate and expand airport terminal building.

Acquire land for runway 13 runway protection zone.

Decision Date: April 8, 1998.

For Further Information Contact: Sharon Daboin, Harrisburg Airports District Office, (717) 782–4548.

Public Agency: Wichita Airport Authority, Wichita, Kansas.

Application Number: 98–03–C–00–ICT.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in This Decision: $9,014,292.

Earliest Charge Effective Date: May 1, 1998.

Estimated Charge Expiration Date: November 1, 2003.

Class of Air Carriers Not Required to Collect PFC's: None.

Brief Description of Projects Approved for Collection and Use:

General aviation apron repair and seal.
Runway 1L/19R and taxiway D shoulder repair and seal.
Repair of airside pavements.
Repair and reconstruction of taxiway A.
Bypass taxiway AAA.
Access taxiways on east side.
PFC administration costs.
Terminal re-roof.
Acquisition of loading bridges.
Emergency Stand-by generator.
Replacement of deteriorated cable of high voltage system.
Replacement doors.
Concourse modifications.
Visual fire alarm.
Visual paging.
Ramp modification.
Storm water pollution prevention plan.
Replace 1L/19R in-pavement lights.
Replace air carrier ramp lights.
Install surface movement guidance and control system field hardware and supporting hardware.
Airfield service road relocation.
Runway sensor system.
Runway friction equipment.
Airfield deicing materials storage facility.
Snow removal equipment.
Supporting infrastructure [runway sensors].
Acquisition of land for runway protection.
Remodel and expand safety building.
Reconstruct fire pit.

Brief Description of Projects Disapproved:
Aircraft deicing fluids storage facility.

Determination: Disapproved. Reflecting statutory language, Program Guidance Letter (PGL) 93–1.4 specifically states that airplane deicing fluids and storage facilities for such equipment and fluids are not eligible under the Airport Improvement Program (AIP). Therefore, this project does not meet the requirements of § 158.15(b) and is disapproved.

Safety division facility underground storage tanks.
Fire pit underground storage tanks replacement.

Determination: Disapproved. PGL 90–1.2 states in part that the cost of procuring an underground storage tank continues to be an unallowable AIP cost. Therefore, this project does not meet the requirements of § 158.15(b) and is disapproved.

Brief Description of Projects Withdrawn: Carpet replacement.

Determination: This project was withdrawn by the public agency by letter dated March 27, 1998. Therefore, the FAA did not rule on this project in this decision.

Decision Date: April 9, 1998.

For Further Information Contact: Lorna Sandridge, Central Region Airports Division, (816) 426–4730.

Public Agency: City of Corpus Christi, Texas.

Application Number: 98–02–C/00–CRP.

Application Type: Impose and use a PFC.

PFC Level: $3.00

Total PFC Revenue Approved in This Decision: $32,863,948.

Earliest Charge Effective Date: April 1, 1998.

Estimated Charge Expiration Date: December 1, 2017.

Class of Air Carriers Not Required To Collect PFC's:
Part 135 air charter operators who operate aircraft with a seating capacity of less than 10 passengers.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Corpus Christi International Airport.

Brief Description of Projects Approved for Collection and Use:
Lighting control (energy management control system).
Americans with Disabilities Act compliance/safety enhancement.
Canopy expansion and enhancement.
Structural repair to terminal building.
Airport planning studies.
Runway 17/35 rehabilitation.
Runway 13/31 repairs/drainage.
Landslide roadway system reconstruction.
Runway 13/31 extension environmental assessment.
Airfield drainage improvements.
Airfield lighting monitoring and control system.
Aircraft rescue and firefighting (ARFF) improvements.
Commercial apron rehabilitation.
Commercial apron expansion.
Access control system replacement.
Taxiway G lighting and paving and west general aviation apron.
Taxiway F extension.
ARFF vehicle.
Vacuum sweeper.
Passenger lift device.
PFC program formulation costs.
Environmental assessment (storm water).

Brief Description of Projects Approved in Part for Collection and Use: Airfield equipment storage facility.

Determination: Partially approved. The majority of this project, involving buildings to house airfield maintenance equipment, was determined to be ineligible under AIP criteria since AIP eligibility is limited to buildings needed to house eligible ARFF and snow removal equipment, paragraph 567 of FAA Order 5100.38A, AIP Handbook (October 24, 1989). Therefore, only that portion of the project intended for the maintenance of ARFF vehicles is approved.

Brief Description of Projects Withdrawn: Land acquisition environmental assessment.

Determination: This project was withdrawn by the public agency by letter dated March 26, 1998. Therefore, the FAA did not rule on this project in this decision.

Decision Date: April 14, 1998.

For Further Information Contact: Ben Guttery, Southwest Region Airports Division, (817) 222–5614.

Public Agency: Jackson Municipal Airport Authority, Jackson, Mississippi.

Application Number: 98–02–C–00–JAN.

Application type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in This Decision: $2,828,000.

Earliest Charge Effective Date: June 1, 1998.

Estimated Charge Expiration Date: March 1, 2000.

Class of Air Carriers Not Required To Collect PFC's: All air taxi/commercial operators filing FAA Form 1800–31.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Jackson International Airport.

Brief Description of Projects Approved for Collection and Use:
Terminal roadway roundabout.
Rehabilitate airport roadway signage.
Airport communication and security system update.
Rehabilitate existing public roadways.
Airport master plan/Part 150 update for Jackson International Airport and Hawkins Field.

Decision Date: April 17, 1998.

For Further Information Contact: David Shumate, Jackson Airports District Office, (601) 965–4628.

Public Agency: City of Fayetteville, Arkansas.

Application Number: 98–02–C–00–FYV.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in This Decision: $2,726,590.

Earliest Charge Effective Date: August 1, 1999.

Estimated Charge Expiration Date: March 1, 2004.

Class of Air Carriers Not Required to Collect PFC's: None.

Brief Description of Projects Approved for Collection and Use:

Snow removal equipment.

ARFF building.

ARFF truck.

Terminal area improvements.

Commercial ramp rehabilitation and expansion.

Part 107 access control system.

PFC administrative costs.

Decision Date: April 20, 1998.

For Further Information Contact: Ben Guttery, Southwest Region Airports Division, (817) 222–5614.

Public Agency: City and Borough of Juneau, Alaska.

Application Number: 98–01–C–00–JNU.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in This Decision: $1,089,272.

Earliest Charge Effective Date: July 1 1998.

Estimated Charge Expiration Date: April 1, 2000.

Class of Air Carriers Not Required To Collect PFC's: (1) All air carriers operating between Juneau International Airport (JNU) and Chatham, AK; (2) all air carriers operating between JNU and Funter Bay, AK; (3) all air carriers operating between JNU and Petersburg, AK; (4) all air carriers operating between JNU and Wrangell, AK; (5) all air carriers operating between JNU and Takutat, AK; and (6) all air carriers enplaning 1,000 or less passengers annually at JNU.

Determination: Partially approved. The first five classes listed above are for routes on which Essential Air Service subsidies are paid to one carrier. The sixth class listed above is intended to capture all carriers providing minimal service at JNU. A seventh requested class, another Essential Air Service-subsidized route described as all air carriers operating between JNU and Gustavus, AK, was disapproved because the total annual enplanements attributable to that requested class were more than 1 percent of the total annual enplanements at JNU. Based on the information submitted by the public agency, the FAA has determined that the six classes listed above each account for less than 1 percent of the total annual enplanements at JNU.

Brief Description of Projects Approved for Collection and Use:

Acquire snow removal equipment.

Acquire security radio communication equipment.

Acquire refurbished airport beacon.

Acquisition of snow removal equipment.

Acquire ARFF vehicle.

Acquire articulated wheel loader.

Reconstruct taxiway A intersection with runway 8/26.

Improve (pave) airfield access roads.

Reconstruct airfield access roads.

Acquire airport security equipment.

Reconstruct taxiway B intersection.

Improve (pave) float plane pond access road.

Improve (pave) west general aviation apron.

Pave west end access road.

General aviation and air carrier ramp design.

Airport layout plan update.

Install airport guidance sign system.

Preparation of Duck Creek relocation environmental assessment.

Acquisition of vacuum sweeper truck.

Acquire airport command vehicle.

Terminal improvements.

Runway lights replacement.

Planning for airport development.

Rehabilitate blast pads, hard stands at terminal gates 2, 3, 4, and 5, and chip seal adjacent main ramp and associated taxiway.

Acquire deicing equipment.

Airport perimeter fencing design and construction, phase I.

Acquire snow removal equipment loader.

Rehabilitate runway 8/26—design.

North terminal heating renovation.

Taxiway lighting replacement.

Runway 8/26 rehabilitation.

Snow removal equipment—purchase plow trucks (two), phase I.

Terminal wall and ceiling rehabilitation.

Rehabilitate north terminal access.

Snow removal equipment building—design.

Install security fence.

Snow removal equipment—purchase plow truck, phase II.

Environmental for float pond and remote transmitter/receiver area.

Brief Description of Project Approved in Part for Collection and Use: PFC application preparation costs.

Determination: Partially approved. The FAA determined, upon review of the invoices submitted in support of this project, that only a portion of the invoices appeared to be directly related to the preparation of the PFC application submitted to the FAA. Therefore, only a portion of the requested amount was approved.

Brief Description of Project Approved for Collection Only: East end general aviation area development.

Decision Date: April 21, 1998.

For Further Information Contact: Debbie Roth, Alaska Region Airports Division, (907) 271–5443.

Public Agency: County of Pitkin, Aspen, Colorado.

Application Number: 98–02–C–00–ASE.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in This Decision: $1,020,000.

Earliest Charge Effective Date: December 1, 1998.

Estimated Charge Expiration Date: October 1, 2000.

Class of Air Carriers Not Required to Collect PFC's: Air taxi/commercial operators filing FAA Form 1800–31.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Aspen/Pitkin County Airport.

Brief Description of Project Approved for Collection and Use: Rehabilitate air carrier apron.

Decision Date: April 22, 1998.

For Further Information Contact: Christopher Schaffer, Denver Airports District Office, (303) 342–1258.

Public Agency: Los Angeles World Airports, Ontario, California.

Application Number: 97–03–C–00–ONT.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in This Decision: $45,680,000.

Earliest Charge Effective Date: July 1, 1998.

Estimated Charge Expiration Date: January 1, 2003.

Class of Air Carriers Not Required to Collect PFC's: Part 135 air taxi operators.

Determination: Approved. Based on information submitted by the public agency, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Ontario International Airport.

Brief Description of Projects Approved for Collection and Use:

Land acquisition.

Noise mitigation.

Decision Date: April 28, 1998.

For Further Information Contact: John Milligan, Western Pacific Region Airports Division, (310) 725–3621.

Public Agency: City of Portland, Maine.

Application Number: 98–02–C–00–PWM.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in This Decision: $6,887,241.

Earliest Charge Effective Date: November 1, 1998.

Estimated Charge Expiration Date: October 1, 2002.

Class of Air Carriers Not Required to Collect PFC's: Air taxi/commercial operators with less than 200 enplaned passengers per year.

Determination: Approved. Based on information submitted by the public agency, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Portland International Jetport.

Brief Description of Project Approved for Collection and Use:

Reconstruct aircraft parking apron.

New passenger loading bridges.

Flight information display system.

Reconstruct airport access road and construct canopy.

PFC application costs.

Decision Date: April 29, 1998.

For Further Information Contact: Priscilla Scott, New England Region Airports Division, (617) 238–7614.

Public Agency: Broward County Aviation Department, Fort Lauderdale, Florida.

Application Number: 98–02–C–00–FLL.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in This Decision: $190,129,976.

Earliest Charge Effective Date: September 1, 1998.

Estimated Charge Expiration Date: November 1, 2007.

Class of Air Carriers Not Required To Collect PFC's: Part 135 air taxi operators.

Determination: Approved. Based on information submitted by the public agency, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Fort Lauderdale-Hollywood International Airport.

Brief Description of Projects Approved for Use:

Runway 9L/27R dual taxiway A (now called taxiway C).

Air cargo apron and drainage.

Noise monitoring system.

Brief Description of Projects Approved for Collection and Use:

New terminal development.

Muck removal (unsuitable soil)—new terminal development.

Utility corridor.

Terminal roadway improvements.

Electronic visual display and life safety improvements.

ARFF facility improvements.

Interior service road development.

Brief Description of Projects Partially Approved for Collection and Use: Hard stand support facility.

Determination: Partially approved. The FAA has determined that the public agency has justified a portion of this facility on the basis of future aircraft demand. Specifically, the public agency has provided evidence that there will be a shortage of aircraft gates within the next 10 years using enplanement growth rates, peak hour enplanement levels, the enplanement mix, and aircraft and gate capacities as analyzed in accordance with FAA Advisory Circular 150/5360–13. This analysis has indicated that approximately 44 percent of the facility is justified. Therefore, the approved amount is limited to the 44 percent of the project determined to be justified.

Muck removal (unsuitable soil).

Determination: Partially approved. The apron area in the vicinity of concourse B has been determined to be eligible and justified as overnight parking apron to meet existing and near-term demand. Therefore, muck removal to precede construction of that area is eligible. However, the additional apron and concourse A areas were determined to not be justified. The public agency removed the portion of this project associated with future concourse A by letter dated February 20, 1998. However, the public agency is not specifically reduce the proposed cost of the project. Therefore, the FAA has partially approved the project based on a pro-ration of the total project cost.

Future phase terminal design.

Determination: Partially approved. The FAA has determined that the public agency has justified a portion of the design of this facility on the basis of future aircraft demand. Specifically, the public agency has provided evidence that there will be a shortage of aircraft gates within the next 10 years using enplanement growth rates, peak hour enplanement levels, the enplanement mix, and aircraft and gate capacities as analyzed in accordance with FAA Advisory Circular 150/5360–13. This analysis has indicated that approximately 44 percent of the whole facility (which originally included concourse A as well as concourse B) is justified. Accordingly, 44 percent of the cost of the design of the facility is likewise justified. The public agency removed the portion of this project associated with future concourse A by letter dated February 20, 1998. However, the public agency did not specifically reduce the proposed cost of the project. Therefore, the FAA has partially approved the project based on a pro-ration of the total project cost.

Brief Description of Projects Approved for Collection:

Aviation easements.

West side apron phases 2 and 3.

ARFF vehicle.

Brief Description of Project Partially Approved for Collection:

Decommission very high frequency omnidirectional radio range (VOR).

Determination: Partially approved. The FAA determined that the low-level wind shear alert system adjacent to the VOR and proposed for relocation is not eligible in accordance with PGL 93–4.1. In addition, the FAA limited its approval to the in-kind relocation costs of the VOR as required in PGL 93–4.1. Costs in excess of the in-kind relocation costs for the VOR are not eligible for PFC funding.

Brief Description of Disapproved Projects: Airport facilities maintenance.

Determination: Disapproved. The FAA determined that the project is not an eligible airport building as defined in paragraphs 566, 567, and 595 of FAA Order 5100.38A, AIP Handbook (October 24, 1989) and PGL 91–8.1. Accordingly, only the costs associated with the demolition and removal of the building, minus any salvage value as outlined in paragraph 595, are eligible. Since the public agency requested funding under the terminal and concourse construction project for the demolition of this building, any additional costs are not eligible, per paragraph 595. Therefore, this project was disapproved for the imposition and use of a PFC.

Modification of existing aircraft surveillance radar (ASR–9).

Determination: Disapproved. The FAA has determined that this project is not eligible in accordance with PGL 93–4.1 since the shadow problem was created by a project which is not PFC or AIP eligible, namely the construction of a parking garage. Therefore, this project was disapproved.

Brief Description of Withdrawn Projects:

Water and sewer improvements.

Rebuild 4th Avenue and associated noise buffer.

Determination: These projects were withdrawn by the public agency by letter dated April 27, 1998. Therefore, the FAA did not rule on these projects in this decision.

Decision Date: April 30, 1998.

For Further Information Contact: Sandra Holliday, Orlando Airports District Office, (407) 812–6331.

AMENDMENTS TO PFC APPROVALS

Amendment No., city/state	Amendment approved date	Original approved net PFC revenue	Amended approved net PFC revenue	Original estimated charge exp. date	Amended estimated charge exp. date
93–01–C–01–PWM, Portland, ME	02/05/98	$12,233,751	$7,668,867	05/01/01	11/01/98
92–01–C–03–MEI, Meridian, MS	04/16/98	122,500	140,875	12/01/00	04/01/01

Issued in Washington, DC on May 27, 1998.

Eric Gabler,

Manager, Passenger Facility Charge Branch.

[FR Doc. 98–14885 Filed 6–3–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–98–3825]

Notice of Request for Renewal of a Currently Approved Information Collection: Designation of Agents, Motor Carriers, and Brokers

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, this notice announces the intention of the FHWA to request the Office of Management and Budget (OMB) to renew its clearance of the currently approved information collection identified below under Supplementary Information. This information collection allows registered motor carriers, property brokers, and freight forwarders a means of meeting process agent requirements.

DATES: Comments must be submitted on or before August 3, 1998.

ADDRESSES: All signed, written comments should refer to the docket number that appears in the heading of this document and must be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. All comments received will be available for examination at the above address between 10:00 a.m. and 5:00 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped envelope or postcard.

FOR FURTHER INFORMATION CONTACT: Ms. Marian Lee, Office of Motor Carrier Information Analysis, (202) 358–7051, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: Designation of Agents, Motor Carriers, and Brokers.

OMB Number: 2125–0567.

Background

The Secretary of Transportation is authorized to register for-hire motor carriers of regulated commodities under the provisions of 49 U.S.C. 13902, surface freight forwarders under the provisions of 49 U.S.C. 13903, and property brokers under the provisions of 49 U.S.C. 13904. These persons may conduct transportation services only if they are registered pursuant to 49 U.S.C. 13901. The Secretary has delegated authority pertaining to these registrations to the FHWA. Registered motor carriers, brokers, and freight forwarders must designate (1) an agent on whom service of notices in proceedings before the Secretary may be made (49 U.S.C. 13303); and (2) for every state in which they operate, agents on whom process issued by a court may be served in actions brought against the registered transportation entity (49 U.S.C. 13304). Regulations governing the designation of process agents are found at 49 CFR part 366. This designation is filed with the FHWA on Form BOC–3.

Respondents: Motor carriers, freight forwarders, and brokers.

Estimated Average Burden per Response: The estimated average burden per response for Form BOC–3 is 10 minutes.

Estimated Total Annual Burden: The estimated total annual burden is 3,500 hours for Form BOC–3 based on 21,000 filings per year.

Frequency: Form BOC–3 must be filed when the transportation entity first registers with the FHWA. Subsequent filings are made only if the motor carrier, broker, or freight forwarder changes process agents.

Public Comments Invited

Interested parties are invited to send comments regarding any aspect of this information collection, including but not limited to: (1) The necessity and utility of the information collection for the proper performance of the functions of the FHWA; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the collected information; and (4) ways to minimize the collection burden without reducing the quality of the collected information. Comments submitted in response to this notice will be summarized and/or included in the request OMB'S clearance for a renewal of this information collection.

Electronic Availability

An electronic copy of this document may be downloaded using a modem and suitable communications software from the **Federal Register** electronic bulletin board service (telephone number: 202/512–1661). Internet users may reach the **Federal Register**'s WWW site at: http://www.access.gpo.gov/su__docs.

Authority: 23 U.S.C. 315 and 49 CFR 1.48.

Issued on: May 20, 1998.

Michael J. Vecchietti,

Director, Office of Information and Management Services.

[FR Doc. 98–14767 Filed 6–3–98; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Intelligent Transportation Society of America; Public Meeting

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Public Meeting.

SUMMARY: The Intelligent Transportation Society of America (ITS AMERICA) will hold a meeting of its Coordinating Council on Wednesday, July 8, 1998. The following designations are made for each item: (A) is an ''action'' item; (I) is an ''information item;'' and (D) is a ''discussion'' item. The agenda includes the following: (1) Call to Order and Introductions (I); (2) Statements of Antitrust Compliance and Conflict of Interest (A); (3) Approval of Last Meeting's Minutes (A); (4) Federal Report (I&D); (5) Shared Resource Policy

(A); (6) ISTEA Reauthorization Update (I/D); (7) President's Report (I); (8) National ITS Advanced Construction and Maintenance Program Action Plan (A); (9) DTAG Program Advice Memorandum (A); (10) Professional Capacity Building Update (I); (11) Research Agenda Framework (I); (12) ITS America Training Program Update (I);(13) FCC Frequency Petition Update (I); (14) Report on ITS World Congresses (I/D); (15) Update on Board Governance Policy Task Force (I); (16) Status of Planning for 9th Annual Meeting (I); (17) Coordinating Council Workshop Report-out (A), (a) Role of the Coordinating Council, (b) The IVI: Review of the RFI Analysis, and Desired Role of the Coordinating Council and Committees in the Future, and (c) ISTEA Reauthorization: Deployment Policy; (18) Roundtable Discussion Of Committee And Task Force Activities—Committee And Task Force Chairs (I/D); (19) Other Business.

ITS AMERICA provides a forum for national discussion and recommendations on ITS activities including programs, research needs, strategic planning, standards, international liaison, and priorities. The charter for the utilization of ITS AMERICA establishes this organization as an advisory committee under the Federal Advisory Committee Act (FACA), 5 USC app. 2, when it provides advice or recommendations to DOT officials on ITS policies and programs. (56 FR 9400, March 6, 1991).

DATES: The Coordinating Council of ITS AMERICA will meet on Wednesday, July 8, 1998, from 10:20 a.m.—2 p.m.(Eastern Standard time).

ADDRESSES: Airlie Conference Center, 6809 Airlie Road, Warrenton, Virginia, 20187. Phone number: (540) 347–1300. Fax number: (540) 341–3207.

FOR FURTHER INFORMATION CONTACT: Materials associated with this meeting may be examined at the offices of ITS AMERICA, 400 Virginia Avenue, SW., Suite 800, Washington, DC. 20024. Persons needing further information or to request to speak at this meeting should contact Kenneth Faunteroy at ITS AMERICA by telephone at (202) 484–4130, or by FAX at (202) 484–3483. The DOT contact is Mary Pigott, FHWA, HVH–1, Washington, D.C. 20590, (202) 366–9230. Office hours are from 8:30 a.m. to 5:00 p.m., e.t., Monday through Friday, except for legal holidays.

(23 U.S.C. 315; 49 CFR 1.48)

Issued on: May 29, 1998.

Jeffrey Paniati,

Deputy Director, ITS Joint Program Office.

[FR Doc. 98–14770 Filed 6–3–98; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Major Investment Study/Environmental Impact Statement on the Lower Manhattan Access Alternatives Study in New York County, NY

AGENCY: Federal Transit Administration (FTA) DOT.

ACTION: Notice of intent to prepare a Major Investment Study/Environmental Impact Statement.

SUMMARY: The Federal Transit Administration (FTA) and the Metropolitan Transportation Authority (MTA) intend to prepare a Major Investment Study (MIS) and an Environmental Impact Statement (EIS) in accordance with the FTA/Federal Highway Administration's Statewide Planning, Metropolitan Planning regulations under 23 CFR part 450 and the National Environmental Policy Act (NEPA) of 1969, as amended, and implemented by the Council on Environmental Quality (CEQ) regulations (40 CFR parts 1500–1508) to study transportation improvements for access to the lower portion of Manhattan in the City of New York. This study will also comply with the requirements of the 1990 Clean Air Act Amendments (CAAA). The MTA will ensure that the EIS also satisfies the requirements of the State of New York Environmental Quality Review Act and the City of New York Environmental Quality Review Act.

The MIS/DEIS will investigate how the transportation system serving Lower Manhattan can be improved. Lower Manhattan is an area that: (1) Is experiencing growth in new sectors (residential, recreation and tourist) resulting in a changing mix of land uses and activities; (2) is highly-dependent on quality transit services for continued economic viability; and (3) is perceived to be difficult to access, particularly from commuter railroad terminals in Manhattan and Brooklyn.

The purpose of this Lower Manhattan Access Alternatives MIS/DEIS study is to (1) develop feasible, cost-effective, and broadly beneficial transportation solutions that can meet the area's transportation shortcomings; (2) maintain or improve Lower Manhattan's environmental quality; and (3) provide meaningful and significant opportunities for business, civic and community input throughout the study process.

Among the alternatives that the MIS/DEIS will evaluate are the No-Build Alternative; Transportation System Management (TSM) alternatives; high quality shuttle services; new subway services; extended commuter rail services; and other new alternatives generated through the scoping process. Scoping will be accomplished through correspondence with interested persons, organizations, and federal, state and local agencies, and afternoon and evening public scoping meetings.

DATES: *Comment Due Date:* Written comments on the alternatives and impacts to be considered should be sent to the MTA by July 14, 1998. Written comments on the project scope should be sent to John D. Dean, Project Manager, Metropolitan Transportation Authority, 347 Madison Avenue (10th Floor), New York, New York 10017. Oral comments may also be provided at the scoping meeting. *Scoping Meetings:* Public scoping meetings will be held on:

- Thursday, June 18, 1998, 11:00 AM to 1:00 PM at the U.S. Customs House, 1 Bowling Green, New York, New York 10041.
- Thursday, June 18, 1998, 5 PM to 7 PM, in the MTA Board Room, 347 Madison Avenue, 5th Floor, New York , New York 10017.
- Tuesday, June 23, 1998, 5 PM to 7 PM, Social Services Auditorium, 101 County Seat Drive, Mineola, New York 11501.
- Wednesday, June 24, 1998, 5 PM to 7 PM, Westchester County Center, 198 Central Avenue, White Plains, New York 10601.

FOR FURTHER INFORMATION CONTACT: Anthony Carr, Director, Office of Planning and Program Development, Federal Transit Administration, 26 Federal Plaza, Suite 2940, New York, New York 10278. Phone: (212) 264–8162, FAX (212) 264–8973.

SUPPLEMENTARY INFORMATION:

I. Scoping

FTA and MTA invite all individuals, organizations, and federal, state, and local agencies to participate in defining the alternatives to be evaluated in the MIS/DEIS and identifying any significant social, economic, or environmental issues related to the alternatives. A draft Scoping Document will be prepared to describe the purpose of the project, the proposed alternatives, the impact areas to be evaluated, the public involvement program, and the preliminary project schedule. This

document will be mailed to affected federal, state, and local agencies, and will be provided upon request to interested parties on record. The draft Scoping Document may also be obtained from John D. Dean, Project Manager, Metropolitan Transportation Authority, 347 Madison Avenue, New York, New York 10017 or downloaded from the project website [www.lowermanhattan.com]. Scoping comments may be made verbally at the public scoping meetings, or in writing. See the **DATES** section above for locations and times. During the scoping phase of the project, comments should focus on identifying specific social, economic, or environmental impacts to be evaluated, and suggesting alternatives that are less costly or less environmentally damaging while achieving similar transit objectives. Scoping is not the appropriate forum in which to indicate a preference for a particular alternative. Anyone wishing to be placed on the mailing list to receive further information should contact John D. Dean of the MTA as previously described.

II. Description of Study Area and Project Need

The core study area is Lower Manhattan south of the following streets: beginning at the Hudson River, east along Chambers Street, north along West Broadway, east along Worth Street, south along St. James Place, and east along Dover Street (Brooklyn Bridge) to the East River. These study area boundaries provide a rough guide, and are to be considered flexible and dependent on the outcome of the scoping process. The study area includes key business locations such as the World Trade Center and World Financial Center; Wall Street and Water Street corridor; civic sites such as City Hall, Federal Plaza, and Foley Square; historic and recreational areas such as South Street Seaport, Federal Hall, and the Battery; and growing residential areas such as Southbridge Towers, Battery Park City, and new residential conversions of former commercial space east of Broad Street.

This study will examine three primary access corridors that link New York's northern and eastern suburbs to the Lower Manhattan ''core area.'' These corridors can be summarized as being (1) on the eastside of Manhattan, largely from the Grand Central Terminal area; (2) on the west side of Manhattan, from the Penn Station/Port Authority Bus Terminal area, and (3) across the East River, from the Atlantic Terminal Complex in downtown Brooklyn. Other reasonable access corridors identified in the scoping process will also be considered.

The purpose of the MIS/DEIS process is, in coordination with a regional framework of transportation studies, to thoroughly examine the short and long term needs and available options for improving transportation access to Lower Manhattan, and to identify a preferred investment strategy that will address the study area's transportation needs in a cost-effective, equitable, and publicly acceptable manner. This study will consider the findings, conclusions, and recommendations of other recent and contemporary regional transportation studies and data gathering efforts, and closely coordinate with these ongoing studies.

III. Alternatives

Current Alternatives proposed for evaluation include: (1) No-Build, which involves no change to transportation services or facilities in the study area beyond already committed projects; (2) The Transportation System Management (TSM) alternative, which consists of low-to-medium cost improvements that address both short and long term needs; (3) High Quality Shuttle Service from Grand Central Terminal and/or Jamaica Station to Lower Manhattan using newly constructed and/or existing rights of way, such as the BMT Broadway Line or the LIRR Atlantic Branch; (4) New Subway Service including potential construction of the Second Avenue Subway to Lower Manhattan; and (5) Extended Commuter Rail from Grand Central Terminal and/or Jamaica to Lower Manhattan using newly constructed and/or existing rights of way. Other reasonable alternatives proposed during the scoping process would also be considered.

IV. Probable Effects/Potential Impacts for Analysis

The MIS/DEIS will evaluate all significant social, economic and environmental impacts of the proposed alternatives. Among the issues to be investigated in the study area and its access corridors are the potential increase in transit ridership on the current system, the expected increase in mobility, the capital outlays needed to construct the project improvements, and the cost of operating and maintaining the facilities created by the project. Social and environmental impacts proposed for analysis include land use and urban development impacts, visual impacts, impacts on cultural and open space resources, health and safety impacts, and noise and vibration impacts. Impacts on natural areas, geologic forms, air quality, groundwater, and hazardous materials will also be analyzed. The impacts will be evaluated both for the construction period and for the long-term period of operation. Impacts to the markets outside the core study area and the access corridors will also be examined where it is appropriate (i.e. traffic and parking near suburban rail stations). Measures to mitigate significant adverse impacts will be considered.

IV. FTA Procedures

In accordance with Federal Transit Laws and FTA regulations and policies, the MIS/DEIS will include an evaluation of the social, economic, and environmental impacts of the alternatives. After its publication, the MIS/DEIS will be available for public and agency review and comment, and a public hearing will be held. On the basis of the MIS/DEIS and the public and agency comments received, the MTA will select a locally preferred alternative for a major investment strategy. The locally preferred alternative will then be presented to the Metropolitan Planning Organization (MPO) for affirmation and inclusion into the Regional Transportation Plan (RTP) and Transportation Improvement Program (TIP).

Issued on: May 29, 1998.

Letitia Thompson,

Regional Administrator, Federal Transit Administration.

[FR Doc. 98–14768 Filed 6–3–98; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33601]

Grand Trunk Western Railroad Incorporated—Petition for Declaratory Order—Spur, Industrial, Team, Switching or Side Tracks, in Detroit, MI

AGENCY: Surface Transportation Board.

ACTION: Request for comments.

SUMMARY: The Surface Transportation Board (Board) is instituting a declaratory order proceeding and is requesting comments on the petition of Grand Trunk Western Railroad, Inc. (GTW), for an order declaring that certain tracks located near the Renaissance Center in Detroit, MI, are ''spur, industrial, team, switching, or side tracks'' under the regulatory exemption at 49 U.S.C. 10906.

DATES: Any interested person may file with the Board written comments concerning GTW's petition by July 2, 1998. GTW may reply by July 16, 1998.

ADDRESSES: Send an original plus 10 copies of all pleadings, referring to STB Finance Docket No. 33601, to: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001, ATTN: STB Finance Docket No. 33601. In addition, pleadings must certify that a copy has been served on GTW's representatives: Robert P. vom Eigen and Jamie Palter Rennert, Hopkins & Sutter, 888 Sixteenth Street, N.W., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 565–1600. [TDD for the hearing impaired: (202) 565–1695.]

SUPPLEMENTARY INFORMATION: By petition filed on May 20, 1998, GTW requests that we issue an order under 5 U.S.C. 554(e) and 49 U.S.C. 721(a) declaring that certain tracks located near the Renaissance Center in Detroit, MI, are ''spur, industrial, team, switching, or side tracks'' that are, under 49 U.S.C. 10906, exempt from Board authority over the abandonment and purchase of lines of railroad. The tracks at issue extend from GTW's Dequindre Line at mileposts 0.57, 0.71, and 0.81, respectively, near the Detroit riverfront. GTW has requested expedited consideration of its petition so that plans for the sale and development of the parcels of land underlying these tracks may proceed promptly. According to GTW, this land is to be developed to support (a) relocation of General Motors Corporation's global headquarters to the Renaissance Center on the Detroit riverfront and (b) a casino district designated by the City of Detroit. By this notice, the Board is requesting comments on GTW's petition.

Board decisions and notices are available on our website at ''WWW.STB.DOT.GOV.''

Decided: May 28, 1998.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 98–14730 Filed 6–3–98; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

[STB Finance Docket No. 32760 (Sub-No. 26)]

Union Pacific Corporation, Union Pacific Railroad Company, and Missouri Pacific Railroad Company; Control and Merger; Southern Pacific Rail Corporation, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp., and The Denver and Rio Grande Western Railroad Company; (Houston/Gulf Coast Oversight)

AGENCY: Surface Transportation Board.

ACTION: Decision No. 5; Notice of extension to file requests for additional conditions to the UP/SP merger for the Houston, Texas/Gulf Coast area, and revisions to procedural schedule.

SUMMARY: The Board is granting a motion filed May 20, 1998, by the Texas Mexican Railway Company, the Kansas City Southern Railway Company, the Chemical Manufacturers Association, the Society of the Plastics Industry, Inc., the Texas Chemical Council, and the Railroad Commission of Texas, collectively requesting an extension until July 8, 1998, to file requests and supporting evidence for additional remedial conditions to the UP/SP merger [1] as they pertain to rail service in the Houston, Texas/Gulf Coast region. As a result, the Board is issuing the revised procedural schedule set forth at the end of this decision.

DATES: Under the revised schedule, the proceeding will now commence on July 8, 1998. On that date, all interested parties must file requests for new remedial conditions to the UP/SP merger regarding the Houston/Gulf Coast area, along with all supporting evidence. The Board will publish a notice of acceptance of requests for new conditions in the **Federal Register** by August 7, 1998. Notices of intent to participate in the oversight proceeding are due August 28, 1998. All comments, evidence, and argument opposing the requested new conditions are due September 18, 1998. Rebuttal in support of the requested conditions is due October 16, 1998.

ADDRESSES: An original plus 25 copies of all documents, referring to STB Finance Docket No. 32760 (Sub-No. 26), must be sent to the Office of the Secretary, Case Control Unit, ATTN: STB Finance Docket No. 32760 (Sub-No. 26), Surface Transportation Board, 1925 K Street, N.W., Washington, DC 20423–0001.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 565–1600. [TDD for the hearing impaired: (202) 565–1695.]

SUPPLEMENTARY INFORMATION: On March 31, 1998, the Board instituted an oversight proceeding to consider requests for additional conditions to the UP/SP Merger for the Houston/Gulf Coast area, including those that seek divestiture of certain of the merged carriers' property.[2] All interested persons were directed to file their requests, along with all supporting evidence, by June 8, 1998.

On May 20, 1998, the above-named parties moved for a 30-day extension of that date to July 8, 1998. They state that they are working toward a consensus with respect to conditions that they may request, and that additional time is needed to coordinate their proposal and prepare all supporting evidence. The Burlington Northern and Santa Fe Railway Company (BNSF) and the National Industrial Transportation League filed letters stating that they do not oppose the extension. If the Board grants the motion, however, BNSF urges that the revised due date for filing requests for conditions, and other adjustments to the procedural schedule, be made applicable for all interested persons. UP has asked the Board to adhere to the present schedule.

We do not believe that a 30-day extension for filing requested conditions will unduly burden UP or delay our disposition of these matters. Accordingly, we will extend the deadline for filing requested conditions, make other related adjustments to the procedural schedule, and make them applicable for all other interested persons.

As set forth in the revised procedural schedule, parties that wish to request new remedial conditions to the UP/SP merger as they pertain to the Houston/Gulf Coast region must file them, along with their supporting evidence, by July 8, 1998; the remainder of the procedural

[1] Union Pacific Corporation, Union Pacific Railroad Company, and Missouri Pacific Railroad Company—Control and Merger—Southern Pacific Rail Corporation, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SCPSL Corp., and The Denver and Rio Grande Western Railroad Company, Finance Docket No. 32760 (UP/SP Merger), Decision No. 44 (STB served Aug. 12, 1996).

[2] The Board instituted this proceeding in Finance Docket No. 32760 (Sub-No. 21), Decision No. 12 (published in the **Federal Register** on April 3, 1998 (63 FR 16628)), pursuant to the 5-year oversight condition that it imposed upon its approval of the UP/SP Merger. By decision served May 19, 1998, the Board corrected the March 31 decision by designating the docket number for the Houston/Gulf Coast Oversight proceeding as Finance Docket No. 32760 (Sub-No. 26) rather than (Sub-No. 21), and designating Decision No. 12 in Sub-No. 21 as Decision No. 1 in Sub-No. 26.

schedule is adjusted accordingly. In all other respects, the March 31 decision instituting this proceeding (as corrected on May 19) remains essentially the same.[3]

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Decided: May 29, 1998.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams,

Secretary.

Revised Procedural Schedule

July 8, 1998
Requests for new remedial conditions (with supporting evidence) filed.
August 7, 1998
Board notice of acceptance of requests for new conditions published in the **Federal Register**.
August 28, 1998
Notice of intent to participate in proceeding due.
September 18, 1998
All comments, evidence, and argument opposing requests for new remedial conditions to the merger due. Comments by U.S. Department of Justice and U.S. Department of Transportation due.
October 16, 1998
Rebuttal evidence and argument in support of requests for new conditions due.

The necessity of briefing, oral argument, and voting conference will be determined after the Board's review of the pleadings.

[FR Doc. 98–14833 Filed 6–3–98; 8:45 am]

BILLING CODE 4915–00–P

[3] The only change in the timing of the presentations is that comments in opposition to requests for conditions will be due approximately six weeks after the Board's notice of acceptance of such requests is published in the **Federal Register**, rather than the approximately five weeks afforded in the initial schedule. That is because the oral argument in No. 96–1373, *Western Coal Traffic League* v. *STB* (D.C. Cir.), the proceeding reviewing the Board's UP/SP merger decision, will be held on September 11, 1998.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–33 (Sub–No. 117X)]

Union Pacific Railroad Company—Abandonment Exemption—in Lake County, CO

Union Pacific Railroad Company (UP) has filed a notice of exemption under 49 CFR Part 1152 Subpart F—*Exempt Abandonments* to abandon an approximately 1.8-mile portion of the Leadville Branch from milepost 274.3 near McWethy Drive to the end of the line at milepost 276.1 at the rail yard near U.S. Highway 24, in Leadville, Lake County, CO.[1] The line traverses United States Postal Service Zip Code 80461.

UP has certified that: (1) no local traffic has moved over the line for at least 2 years; (2) any overhead traffic can be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment— Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on July 4, 1998, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by June 15, 1998. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by June 24, 1998, with: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423.

A copy of any petition filed with the Board should be sent to applicant's representative: Joseph D. Anthofer, General Attorney, Union Pacific Railroad Company, 1416 Dodge Street, Room 830, Omaha, NE 68179.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

UP has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by June 9, 1998. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423) or by calling SEA, at (202) 565–1545. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), UP shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by UP's filing of a notice of consummation by June 4, 1999, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our website at ''WWW.STB.DOT.GOV.''

Decided: May 28, 1998.

[1] This notice of exemption is related to Finance Docket No. 32760, *Union Pacific Corporation, Union Pacific Railroad Company, and Missouri Pacific Railroad Company— Control and Merger— Southern Pacific Rail Corporation, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp., and The Denver and Rio Grande Western Railroad Company.*

The Denver and Rio Grande Western Railroad Company (DGRW) previously owned the involved line of railroad, which became a line on the UP after DRGW was merged into UP on June 30, 1997. However, the Board granted discontinuance authority rather than full abandonment over the Sage-Leadville Line in Docket No. AB–8 (Sub-No. 36X), *The Denver and Rio Grande Western Railroad Company—Discontinuance Exemption—Sage-Leadville Line In Eagle and Lake Counties, CO* and Docket No. AB–8 (Sub-No. 39), *The Denver and Rio Grande Western Railroad Company—Discontinuance—Malta-Canon City Line, In Lake, Chaffee and Fremont Counties, CO, See* Finance Docket No. 32760 (ICC served Aug. 12, 1996). In this filing, UP is seeking to abandon the stub end of the line.

The Lake County Board of County Commissioners (Lake County) filed a request for issuance of a notice of interim trail use (NITU) for the entire line pursuant to section 8(d) of the National Trails System Act, 16 U.S.C. 1247(d). The Board will address Lake County's trail use request, and any others that may be filed, in a subsequent decision.

[2] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[3] Each offer of financial assistance must be accompanied by the filing fee, which is currently set at $1000. *See* 49 CFR 1002.2(f)(25).

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 98–14867 Filed 6–3–98; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Submission to OMB for Review; Comment Request

May 26, 1998.

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.

DATES: Written comments should be received on or before July 6, 1998 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0137.

Form Number: IRS Form 2032.

Type of Review: Extension.

Title: Contract Coverage Under Title II of the Social Security Act.

Description: American employers can enter into an agreement to extend social security coverage to U.S. citizens and resident aliens abroad by foreign affiliates.

Respondents: Individuals or households, Business or other for-profit.

Estimated Number of Respondents/Recordkeepers: 160.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—2 hrs., 9 min.

Learning about the law or the form—24 min.

Preparing and sending the form to the IRS—27 min.

Frequency of Response: On occasion.

Estimated Total Reporting/Recordkeeping Burden: 480 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. 98–14781 Filed 6–3–98; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission to OMB for Review; Comment Request

May 28, 1998.

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.

DATES: Written comments should be received on or before July 6, 1998 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: New.

Form Number: None.

Type of Review: New collection.

Title: Simplified Tax and Wage Reporting System (STAWRS): Tax and Wage Reporting Survey.

Description: This is a generical clearance for a level of customer interest survey and focus group interviews to reduce employer tax burden to be conducted over the next year.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 1,000.

Estimated Burden Hours Per Respondent: 20 minutes.

Frequency of Response: Other (one time only).

Estimated Total Reporting Burden: 335 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. 98–14782 Filed 6–3–98; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

May 26, 1998.

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.

DATES: Written comments should be received on or before June 19, 1998 to be assured of consideration.

SPECIAL REQUEST: In order to conduct the survey described below in June 1998, the Department of the Treasury is requesting that the Office of Management and Budget (OMB) review and approve this information collection by June 10, 1998. To obtain a copy of this study, please contact the Bureau of the Public Debt Clearance Officer at the address listed below.

Bureau of the Public Debt (BPD)

OMB Number: 1535–0122.

Project Number: BPD 98–1.

Type of Review: Revision.

Title: 1998 Treasury Director Customer Service Survey

Description: The survey will be used to gather some general information about Public Debt's customers, their interest in new services, and most importantly, their level of satisfaction with Treasury Direct. Public Debt hopes to obtain the following objectives to improve its customer service:

- Determine the satisfaction level with the Treasury Direct program and its customer service;
- Explore ways to meet the future needs of its customers and chart its future; and
- Complete a detailed profit of current customers so Public Debt can:
- Identify existing and potential market segments, and
- Define marketing strategies and potential services Public Debt may want to develop.

Respondents: Individuals or households.

Estimated Number of Respondents: 2,000.

Estimated Burden Hours Per Respondent: 7 minutes.

Frequency of Response: Other (one-time only).

Estimated Total Reporting Burden: 233 hours.

Clearance Officer: Vicki S. Thorpe (304) 480–6553, Bureau of the Public Debt, 200 Third Street, Parkersburg, West VA 26106–1328.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 98–14783 Filed 6–3–98; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

May 28, 1998.

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.

DATES: Written comments should be received on or before July 6, 1998 to be assured of consideration.

Financial Crimes Enforcement Network (FinCEN)

OMB Number: 1506–0009.

Form Number: TD F 90–22.1.

Type of Review: Extension.

Title: Financial Recordkeeping and Reporting of Currency and Foreign Transactions; and, Report of Foreign Bank and Financial Accounts (TD F 90–22.1).

Description: This information collection, which applies primarily to financial institutions, assists Federal, State and local law enforcement in the identification, investigation, and prosecution of individuals involved in money laundering, tax evasion, and prosecution of individuals involved in money laundering, tax evasion, narcotics trafficking and other crimes. The information collection also assists in the examination and other regulatory matters.

Respondents: Individuals or households, Business or other for-profit.

Estimated Number of Respondents/Recordkeepers: 140,000.

Estimated Burden Hours Per Respondent/Recordkeeper: 10 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting/Recordkeeping Burden: 11,529,711 hours.

Clearance Officer: Lois K. Holland (202) 622–1563, Departmental Offices, Room 2110, 1425 New York Avenue, N.W., Washington, DC 20220.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 98–14784 Filed 6–3–98; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

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 Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Importation, Receipt, Storage, and Disposition by Explosives Importers, Manufacturers, Dealers, and Users Licensed Under Title 18 U.S.C. Chapter 40 (Explosives).

DATES: Written comments should be received on or before August 3, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Linda Barnes, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Mark Waller, Explosives and Arson Programs Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8047.

SUPPLEMENTARY INFORMATION:

Title: Importation, Receipt, Storage, and Disposition by Explosives Importers, Manufacturers, Dealers, and Users Licensed Under Title 18 U.S.C. Chapter 40 (Explosives).

OMB Number: 1512–0373.

Recordkeeping Requirement ID Number: ATF REC 5400/3.

Abstract: These records show daily activities in the importation, manufacture, receipt, storage and disposition of all explosive materials covered under 18 U.S.C. Chapter 40. The records are used to show where and to whom explosive materials are sent, thereby ensuring that any diversion will be readily apparent and, if lost or stolen, ATF will be immediately notified on discovery of the loss or theft. Licensees and permittees shall keep records on the business premises for 5 years from the date a transaction occurs or until discontinuance of business or operations by the licensee or permittee.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 13,708.

Estimated Time Per Respondent: 6 minutes.

Estimated Total Annual Burden Hours: 318,300.

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.

Dated: May 28, 1998.

William J. Earle,

Assistant Director (Management)/CFO.

[FR Doc. 98–14839 Filed 6–3–98; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

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 Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Drawback on Beer Exported.

DATES: Written comments should be received on or before August 3, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Linda Barnes, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Charles N. Bacon, Regulations Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8528.

SUPPLEMENTARY INFORMATION:

Title: Drawback on Beer Exported.

OMB Number: 1512–0083.

Form Number: ATF F 1582–B (5130.6).

Abstract: When taxpaid beer is removed from a brewery and ultimately exported, the brewer exporting the beer is eligible for a drawback (refund) of Federal taxes paid. By completing this form and submitting documentation of exportation, the brewer may receive a refund of Federal taxes paid.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 100.

Estimated Time Per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 5,000.

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.

Dated: May 28, 1998.

William J. Earle,

Assistant Director (Management)/CFO.

[FR Doc. 98–14840 Filed 6–3–98; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

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 Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Schedule of Tobacco Products, Cigarette Papers or Tubes Withdrawn From the Market.

DATES: Written comments should be received on or before August 3, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Linda Barnes, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Mary A. Wood, Regulations Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8185.

SUPPLEMENTARY INFORMATION:

Title: Schedule of Tobacco Products, Cigarette Papers or Tubes Withdrawn From the Market.

OMB Number: 1512–0164.

Form Number: ATF F 3069 (5200.7).

Abstract: ATF F 3069 (5200.7) is used by persons who intend to withdraw tobacco products from the market for which the tax has already been paid or determined. The form describes the products that are to be withdrawn to determine the amount of tax to be claimed later as a tax credit or refund. The form notifies ATF when withdrawal or destruction is to take place, and ATF may elect to supervise withdrawal or destruction.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 119.

Estimated Time Per Respondent: 45 minutes.

Estimated Total Annual Burden Hours: 1,071.

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.

Dated: May 28, 1998.

William J. Earle,

Assistant Director (Management)/CFO.

[FR Doc. 98–14841 Filed 6–3–98; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

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 Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Annual Firearms Manufacturing and Exportation Report of Semiautomatic Assault Weapons.

DATES: Written comments should be received on or before August 3, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Linda Barnes, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Nancy Smith, Office of Firearms, Explosives and Arson, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8481.

SUPPLEMENTARY INFORMATION:

Title: Annual Firearms Manufacturing and Exportation Report of Semiautomatic Assault Weapons.

OMB Number: 1512–0543.

Form Number: ATF F 5300.11A.

Abstract: ATF F 5300.11A is intended to report the number of semiautomatic assault weapons made in the United States and entering into commerce. Since semiautomatic assault weapons may be constructed from foreign firearms and used firearms, the reporting instructions on Form 5300.11A are different from those used in ATF F 5300.11, (Annual Firearms Manufacturing and Exportation Report). Records must be kept indefinitely for this information collection.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit, Federal Government, State, Local or Tribal Government.

Estimated Number of Respondents: 1,556.

Estimated Time Per Respondent: 6 minutes.

Estimated Total Annual Burden Hours: 156.

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.

Dated: May 28, 1998.

William J. Earle,

Assistant Director (Management)/CFO.

[FR Doc. 98–14842 Filed 6–2–98; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

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 Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Usual and Customary Business Records Relating to Denatured Spirits.

DATES: Written comments should be received on or before August 3, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Linda Barnes, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Mary A. Wood, Regulations Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8185.

SUPPLEMENTARY INFORMATION:

Title: Usual and Customary Business Records Relating to Denatured Spirits.

OMB Number: 1512–0337.

Recordkeeping Requirement ID Number: ATF REC 5150/1.

Abstract: Denatured spirits are used for nonbeverage industrial purposes in the manufacture of personal household products. The records are maintained at the premises of the regulated individual and are routinely inspected by ATF personnel during field tax compliance examinations. These examinations are necessary to verify that all specially denatured spirits can be accounted for and are being used only for purposes authorized by laws and regulations. By ensuring that spirits have not been diverted to beverage use, tax revenue and public safety are protected. There is no additional recordkeeping imposed on the respond as these requirements are usual and customary business records.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 3,111.

Estimated Time Per Respondent: 0.

Estimated Total Annual Burden Hours: 1.

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.

Dated: May 28, 1998.

William J. Earle,

Assistant Director (Management)/CFO.

[FR Doc. 98–14843 Filed 6–3–98; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

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 Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Tobacco Products Manufacturers—Supporting Records for Removals for the Use of the United States.

DATES: Written comments should be received on or before August 3, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Linda Barnes, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Cliff Mullen, Regulations Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8181.

SUPPLEMENTARY INFORMATION:

Title: Tobacco Products Manufacturers—Supporting Records for Removals for the United States.

OMB Number: 1512–0363.

Recordkeeping Requirement ID Number: ATF REC 5210/6.

Abstract: Tobacco products have historically been a major source of excise tax revenues for the Federal government. In order to safeguard these taxes, tobacco products manufacturers are required to maintain a system of records designed to establish accountability over the tobacco products and cigarette papers and tubes produced. However, these items can be removed without the payment of tax if they are for the use of the United States. Records shall be retained by the manufacturer for 3 years following the close of the year covered therein and shall be made available for inspection by any ATF officer upon his request.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 101.

Estimated Time Per Respondent: 5 hours per year.

Estimated Total Annual Burden Hours: 505.

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.

Dated: May 28, 1998.

William J. Earle,

Assistant Director (Management)/CFO.

[FR Doc. 98–14844 Filed 6–3–98; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 4136

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 4136, Credit for Federal Tax Paid on Fuels.

DATES: Written comments should be received on or before August 3, 1998 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: Credit for Federal Tax Paid on Fuels.

OMB Number: 1545–0162.

Form Number: 4136.

Abstract: Internal Revenue Code section 34 allows a credit for Federal excise tax for certain fuel uses. Form 4136 is used to figure the amount of income tax credit. The data is used by the IRS to verify the validity of the claim for the type of nontaxable or exempt use.

Current Actions: Based on changes made to Form 8849, Claim for Refund of Excise Taxes, the following changes are being made to Form 4136:

- Combining and reordering the lines to match claims that have similar requirements based on Code section;
- Renumbering the lines;
- Expanding the instructions to define the claimant and allowable uses; and
- Limiting attachments to only those claims which by regulations require additional information.

Type of Review: Revision of a currently approved collection.

Affected Public: Business or other for-profit organizations, individuals or households, not-for-profit institutions, farms, and Federal, state, local, or tribal governments.

Estimated Number of Respondent: 619,851.

Estimated Time Per Respondent: 5 hr., 8 min.

Estimated Total Annual Burden Hours: 3,181,961.

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: May 29, 1998.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 98–14876 Filed 6–3–98; 8:45 am]

BILLING CODE 4830–01–U

UNITED STATES ENRICHMENT CORPORATION

Sunshine Act Meeting

AGENCY: United States Enrichment Corporation.

SUBJECT: Board of Directors Meeting.

TIME AND DATE: Tuesday-Wednesday, June 2–3, 1998, commencing at 8:00 a.m., Tuesday, June 2, 1998.

PLACE: USEC Corporate Headquarter, 6903 Rockledge Drive, Bethesda, Maryland 20817.

STATUS: Portions of the Board meeting will be closed to the public.

MATTER TO BE CONSIDERED: Issues related to the privatization of the Corporation and other commercial, financial and operational issues of the Corporation.

CONTACT PERSON FOR MORE INFORMATION: Elizabeth Stuckle at 301/564–3399

Dated: June 2, 1998.

William H. Timbers, Jr.,

President and Chief Executive Officer.

[FR Doc. 98–14956 Filed 6–2–98; 10:19 am]

BILLING CODE 8720–01–M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition Determination

Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, ''Nicholas and Alexandra: The Last Imperial Family of Tsarist Russia,'' (see list [1]), imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to a loan agreement with a foreign lender. I also determine that the exhibition or display of the listed exhibit objects at the First USA Riverfront Arts Center in Wilmington, Delaware, beginning on or about August 1, 1998, ending on or about December 31, 1998, and at two additional venues thereafter, is in the national interest.

Public Notice of these Determinations is ordered to be published in the **Federal Register**.

Dated: May 27, 1998.

Les Jin,

General Counsel.

[FR Doc. 98–14788 Filed 6–3–98; 8:45 am]

BILLING CODE 8230–-01–M

UNITED STATES INFORMATION AGENCY

East Timor Exchange Project; Request for Proposals

SUMMARY: The Office of Citizen Exchanges of the United States Information Agency's Bureau of Educational and Cultural Affairs announces an open competition for an assistance award. Public and private non-profit organizations meeting the provisions described in IRS regulation 26 CFR 1.501(c) may apply to develop the East Timor Exchange Project.

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is ''to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world.''

Programs and projects must conform with Agency requirements and guidelines outlined in the Solicitation Package. USIA projects and programs are subject to the availability of funds.

Announcement Title and Number: All communications with USIA concerning this RFP should refer to the announcement's title and reference number.

Deadline for Proposals: All copies must be received at the U.S. Information Agency by 5 p.m. Washington, D.C. time on Friday, July 17, 1998. Faxed documents will not be accepted at any time. Documents postmarked by the due date but received at a later date will not be accepted.

FOR FURTHER INFORMATION, CONTACT: The Office of Citizen Exchanges (E/P), Room 216, U.S. Information Agency, 301 4th Street, S.W., Washington, D.C. 20547, telephone number: (202) 619–5326, fax number: (202) 260–0440, e-mail address: rharvey@usia.gov to request a Solicitation Package containing more details. Please request required application forms, and standard guidelines for preparing proposals, including specific criteria for preparation of the proposal budget.

To Download a Solicitation Package Via Internet: The entire Solicitation Package may be downloaded from USIA's website at http://www.usia.gov/education/rfps. Please read all information before downloading.

To Receive a Solicitation Package Via Fax on Demand: The entire Solicitation Package may be received via the Bureau's ''Grants Information Fax on Demand System'', which is accessed by calling 202/401–7616. Please request a

[1] A copy of this list may be obtained by contacting Ms. Lorie Nierenberg, Assistant General Counsel, at 202/619–6084. The address is U.S. Information Agency, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

''Catalog'' of available documents and order numbers when first entering the system.

Please specify USIA Program Officer *Name* on all inquiries and correspondences. Interested applicants should read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFP deadline has passed, Agency staff may not discuss this competition in any way with applicants until the Bureau proposal review process has been completed.

Submissions: Applicants must follow all instructions given in the Solicitation Package. The original and 12 copies of the application should be sent to: U.S. Information Agency, Ref.: *E/P–98–56,* Office of Grants Management, E/XE, Room 326, 301 4th Street, S.W., Washington, D.C. 20547.

Applicants must also submit the ''Executive Summary'' and ''Proposal Narrative'' sections of the proposal on a 3.5″ diskette, formatted for DOS. This material must be provided in ASCII text (DOS) format with a maximum line length of 65 characters. USIA will transmit these files electronically to USIS posts overseas for their review, with the goal of reducing the time it takes to get posts' comments for the Agency's grants review process.

Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. ''Diversity'' should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into the total proposal. Public Law 104–319 provides that ''in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy'', USIA ''shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries.'' Proposals should account for advancement of this goal in their program contents, to the full extent deemed feasible.

SUPPLEMENTARY INFORMATION:

Background

The Indonesian province of East Timor has had relatively little contact with the outside world, and its people are only now receiving increased opportunities for educational exchange with western countries, including the U.S. Many are ill-prepared for U.S. study, due to limited opportunities at local institutions of higher learning, insufficient English-language skills, and inadequate library resources and knowledge of information science. International efforts to assist the people of East Timor require sensitivity to appropriateness for the local context. Our objective is to provide meaningful opportunities to qualified exchange program participants so that a growing number of East Timor residents are knowledgeable about U.S. society and values and can share their experiences with others. Implementation of projects may be affected by changes underway in Indonesia.

Guidelines

Projects designed to contribute to better understanding of the U.S. in East Timor could include training in administration and/or curriculum development for educational institutions; exchanges for print and/or broadcast media professionals; public administration and NGO management programs; enhancement of English-language teaching; support for development of library resources to the University of East Timor and training in library science; and other program activities which contribute to the overall goal of enhancing mutual understanding between the U.S. and the province of East Timor. Interested U.S. institutions will be expected to liaise closely with the U.S. Information Service in Jakarta, Indonesia. Grants must be written prior to September 30, 1998.

Selection of Participants

All grant proposals should clearly describe the type of persons who will participate in the program as well as the process by which the participants will be selected. It is recommended that program in support of U.S. internship include letters tentatively committing host institutions to support internships. In the selection of foreign participants, USIA and USIS Jakarta retain the right to nominate all participants and to accept or deny participants recommended by grantee organizations. However, grantee institutions are often asked by USIA to suggest names of potential participants. The grantee institution will also provide the names of American participants and brief (two pages) biographical data on each American participant to the Office of Citizen Exchanges for information purposes. Priority will be given to foreign participants who have not previously traveled to the United States. Foreign participants in the program will travel to the U.S. utilizing J–1 visas.

Budget

Funding requests submitted to USIS should not exceed $200,000. Organizations with less than four years of experience in conducting international exchange programs will be limited to $60,000.

Applicants must submit a comprehensive budget for the entire program. There must be a summary budget as well as a breakdown reflecting both the administrative budget and the program budget. For further clarification, applicants may provide separate sub-budgets for each program component, phase, location, or activity in order to facilitate USIA decisions on funding.

Allowable costs for the program include the following:

(1) Travel and Per Diem
(2) Administrative Costs
(3) Books and Materials

Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. Eligible proposals will be forwarded to panels of USIA officers for advisory review. All eligible proposals will be reviewed by the program office, as well as the USIA Office of East Asia and Pacific Affairs and the USIS Jakarta overseas, where appropriate. Proposals may be reviewed by the Office of the General Counsel or by other Agency elements. Funding decisions are at the discretion of the USIA Associate Director for Educational and Cultural Affairs. Final technical authority for assistance awards (grants or cooperative agreements) resides with the USIA grants officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. Quality of the program idea: Proposals should exhibit originality,

substance, precision, and relevance to Agency mission.

2. Program planning: Detailed agenda and relevant work plan should demonstrate substantive undertakings and logistical capacity. Agenda and plan should adhere to the program overview and guidelines described above.

3. Ability to achieve program objectives: Objectives should be reasonable, feasible, and flexible. Proposals should clearly demonstrate how the institution will meet the program's objectives and plan.

4. Multiplier effect/impact: Proposed programs should strengthen long-term mutual understanding, including maximum sharing of information and establishment of long-term institutional and individual linkages.

5. Support of Diversity: Proposals should demonstrate substantive support of the Bureau's policy on diversity. Achievable and relevant features should be cited in both program administration (selection of participants, program venue and program evaluation) and program content (orientation and wrap-up sessions, program meetings, resource materials and follow-up activities).

6. Institutional Capacity: Proposed personnel and institutional resources should be adequate and appropriate to achieve the program or project's goals.

7. Institution's Record/Ability: Proposals should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Agency grants as determined by USIA's Office of Contracts. The Agency will consider the past performance of prior recipients and the demonstrated potential of new applicants.

8. Follow-on Activities: Proposals should provide a plan for continued follow-on activity (without USIA support) which ensures that USIA supported programs are not isolated events.

9. Project Evaluation: Proposals should include a plan to evaluate the activity's success, both as the activities unfold and at the end of the program. A draft survey questionnaire or other technique plus description of a methodology to use to link outcomes to original project objectives is recommended. Successful applicants will be expected to submit intermediate reports after each project component is concluded or quarterly, whichever is less frequent.

10. Cost-effectiveness: The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate.

11. Cost-sharing: Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

12. Value to U.S.-Partner Country Relations: Proposed projects should receive positive assessments by USIA's geographic area desk and overseas officers of program need, potential impact, and significance in the partner country(ies).

Notice

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. The Agency reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal USIA procedures.

Dated: May 29, 1998.

Robert L. Earle,

Deputy Associate Director for Educational and Cultural Affairs.

[FR Doc. 98–14933 Filed 6–3–98; 8:45 am]

BILLING CODE 8230–01–M

Corrections

Federal Register
Vol. 63, No. 107
Thursday, June 4, 1998

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.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39998; File No. SR-CHX-98-06]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment Nos. 2 and 3 to the Proposed Rule Change by the Chicago Stock Exchange, Inc. Relating to Registration Requirements

Correction

In notice document 98–13816, beginning on page 28533, in the issue of Tuesday, May 26, 1998, make the following correction:

On page 28535, in the third column, above the FR Doc. line, the signature was omitted and should read as set forth below.

Margaret H. McFarland,

Deputy Secretary.

BILLING CODE 1505-01-D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39996; File No. SR-AMEX-97-30]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the American Stock Exchange, Inc. Relating to Professional Hearing Officers, Executive Committee Review of Appeals From Disciplinary Panel Decisions and Indemnification of Persons Serving on Disciplinary Panels and Exchange Officials

Correction

In notice document 98–13817 beginning on page 28532, in the issue of Tuesday, May 26, 1998, make the following correction:

On page 28533, in the second column, above the FR Doc. line, the signature was omitted and should read as set forth below.

Margaret H. McFarland,

Deputy Secretary.

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98-ACE-15]

Proposed Amendment to Class E Airspace; Garden City, KS; Liberal, KS; Fort Dodge, IA; Fort Madison, IA; Columbus, NE; Grand Island, NE

Correction

In proposed rule document 98–8142 beginning on page 15108 in the issue of Monday, March 30, 1998, make the following corrections:

§ 71.1 [Corrected]

1. On page 15109, in the second column, under the heading **ACE KS E2 Garden City, KS [Revised]**, in the ninth line, ''with'' should read ''within''.

2. On page 15110, in the first column, under the heading **ACE NE E5 Grand Island, NE [Revised]**, in the 14th line, '' after 6.6-mile'' insert ''radius''.

BILLING CODE 1505-01-D

federal register

Thursday
June 4, 1998

Part II

Department of Transportation

Research and Special Programs Administration

49 CFR Parts 171, 177, 178, and 180

Hazardous Materials: Safety Standards for Preventing and Mitigating Unintentional Releases During the Unloading of Cargo Tank Motor Vehicles in Liquefied Compressed Gas Service; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 171, 177, 178, and 180

[Docket No. RSPA–97–2718 (HM–225A)]

RIN 2137–AD07

Hazardous Materials: Safety Standards for Preventing and Mitigating Unintentional Releases During the Unloading of Cargo Tank Motor Vehicles in Liquefied Compressed Gas Service

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

ACTION: Notice of intent to establish a Negotiated Rulemaking Committee and announcement of public meeting.

SUMMARY: RSPA proposes to establish a Negotiated Rulemaking Committee to develop recommendations for alternative safety standards for preventing and mitigating unintentional releases of hazardous materials during the unloading of cargo tank motor vehicles in liquefied compressed gas service. The Committee will develop and adopt its recommendations through a process of negotiation. The Committee will consist of persons who represent the interests affected by the proposed rule, such as businesses that transport and deliver propane, anhydrous ammonia, and other liquefied compressed gases; manufacturers of DOT specification MC 330 and MC 331 cargo tank motor vehicles used to transport liquefied compressed gases; federal safety regulatory agencies; and state and local public safety and emergency response agencies. The purpose of this Notice is to invite interested parties to submit comments on the issues to be discussed and the interests and organizations to be considered for representation on the Committee. Also, RSPA is announcing an organizational meeting to be held in Washington, DC on June 23–24, 1998, to discuss Committee membership, ground rules, and procedural matters.

DATES: RSPA must receive written comments and requests for representation or membership on the Committee by July 6, 1998.

ADDRESSES: Address comments to the Dockets Management System, U.S. Department of Transportation, 400 Seventh Street, SW, Washington, D.C. 20590–0001. Comments should identify the docket number and be submitted in two copies. Persons wishing to receive confirmation of receipt of their written comments should include a self-addressed, stamped postcard. Comments may also be submitted by e-mail to the following address: ''rules@rspa.dot.gov''. The Dockets Management System is located on the Plaza level of the Nassif Building at the Department of Transportation at the above address. Public dockets may be reviewed there between the hours of 10:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. Comments also may be reviewed on-line at the DOT Dockets Management System web site at ''http://dms.dot.gov/.''

FOR FURTHER INFORMATION CONTACT: Jennifer Karim, 202–366–8553, Office of Hazardous Materials Standards, Research and Special Programs Administration, Department of Transportation, 400 Seventh Street, S.W., Washington, DC 20590–0001; or Nancy Machado, 202–366–4400, Office of the Chief Counsel, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, S.W., Washington, DC 20590–001.

SUPPLEMENTARY INFORMATION:

I. Background

The Issues

The Hazardous Materials Regulations (HMR; 49 CFR Parts 171–180) include provisions designed to promote safe unloading of DOT specification MC 330 and MC 331 cargo tank motor vehicles (CTMVs). Among these provisions are requirements for emergency discharge control systems that will automatically shut down unloading in the event of a complete hose or pipe separation and for a qualified person to attend the unloading operation by remaining within sight of the cargo tank and close enough to manually shut down the unloading operation in the event of an emergency. However, as a result of a serious unloading accident in 1996, RSPA has learned that the emergency discharge control systems currently installed on MC 330 and MC 331 CTMVs do not always function as designed. Further, RSPA has discovered that many operators of CTMVs do not comply with the regulatory requirements for attending the unloading operation. Based on comments received for the HM–225 rulemaking, RSPA intends to reevaluate the current regulatory requirements. RSPA has issued a temporary regulation designed to permit cargo tank motor vehicles with non-complying emergency discharge control systems to continue to operate, and is currently considering regulatory alternatives to assure the safety of cargo tank unloading operations.

Emergency Discharge Control Systems

On September 8, 1996, more than 35,000 gallons of propane were released during delivery at a bulk storage facility in Sanford, North Carolina. In that incident, the driver became aware of the system failure when the hose began to oscillate violently while releasing liquid propane. He immediately shut down the engine, stopping the discharge pump, but he could not access the remote closure control to close the internal stop valve. The excess flow feature of the emergency discharge control system (EDCS) did not function, and propane continued to be released from the vehicle. Adding to the problem, the back flow check valve on the storage tank system did not function, resulting in release of propane from the storage tanks.

Based on preliminary information from the Sanford incident, RSPA published an advisory notice in the **Federal Register** on December 13, 1996 [61 FR 65480], to alert persons who design, manufacture, assemble, maintain, or transport hazardous materials in MC 330 and MC 331 cargo tank motor vehicles of this problem with the excess flow feature of the EDCS. Subsequent to publication of the advisory notice, RSPA received information from the industry indicating that there is widespread noncompliance with the EDCS requirements of the HMR (49 CFR part 178.337–11(a)) and, further, that equipment that meets the performance standard for EDCS equipment may not be currently available.

RSPA issued an emergency interim final rule on February 19, 1997, under Docket No. RSPA–97–2133 (HM–225) [62 FR 7638]. This rule specified the conditions under which MC 330 and MC 331 CTMVs may continue to be operated while an EDCS that meets the requirements of the regulations is developed and implemented. A final rule extending and revising the provisions of the emergency interim final rule was issued on August 18, 1997 [62 FR 44038]; a final rule responding to petitions for reconsideration and clarifying certain provisions was issued on December 10, 1997 [62 FR 65187]. The December 10 final rule requires specific marking on affected CTMVs and requires motor carriers to comply with additional operational controls intended to compensate for the failure of the EDCS to function as required by the HMR. The operational controls specified in the December 10 final rule provide an alternative to compliance with the HMR and are intended to assure an acceptable level of safety while the industry and

government continue to work to develop an EDCS that effectively stops the discharge of hazardous materials from a cargo tank if any attached hose or piping is separated. The rule is temporary; its provisions will expire July 1, 1999.

Attendance During Unloading

During the rulemaking that resulted in issuance of the December 10 final rule described above, RSPA discovered that many operators of CTMVs transporting propane are not complying with provisions of the HMR that require that a qualified person ''attend'' the unloading of hazardous materials (49 CFR part 177.834(i)). The cargo tank unloading attendance requirements specify that a person attending the unloading operation must be awake, have an unobstructed view of the cargo tank, and be within 25 feet of the cargo tank. This provision of the HMR is intended to complement the EDCS requirements in that it is meant to assure that the person unloading the cargo tank can manually stop the flow of hazardous material by closing the internal stop valve if there is a leak in the delivery system. Because many CTMV operators are not complying with the attendance requirements of the HMR, they are having difficulty complying with the alternative measures permitted by the emergency interim final rule.

Challenge to the Alternative Regulatory Requirements

The emergency final rule is currently the subject of ongoing litigation arising out of two court challenges. The National Propane Gas Association, Northwest Butane Gas Company, and Huffhunes Gas, Incorporated, have brought an action in the United States District Court for the Northern District of Texas to seek preliminary injunctive and permanent declaratory relief from the December 10 final rule. Similarly, Ferrellgas, LP; Suburban Propane, LP; Agway Petroleum Corporation; Cornerstone Propane Partners, LP; and National Propane, LP, have brought an action in the United States District Court for the Western District of Missouri seeking declaratory and injunctive relief from the August 18 final rule. On February 13, 1998, the Missouri court preliminarily enjoined DOT enforcement of certain provisions of the alternative requirements, and enforcement of unloading attendance requirements applicable to small cargo tank motor vehicles (''bobtails'').

Advance Notice of Proposed Rulemaking

To address the need for a long-term resolution of safety and non-compliance issues, RSPA issued an advance notice of proposed rulemaking (ANPRM) under Docket No. RSPA–97–2718 (HM–225A) [62 FR 44059] on August 18, 1997, requesting comments concerning changes to the HMR that go beyond the scope of the emergency final rule, including new or revised provisions for operator attendance, hose management, and emergency discharge controls. Specifically, the ANPRM requested comments on: (1) whether RSPA should continue to regulate unloading operations of liquefied compressed gases in CTMVs or relinquish regulatory control in this area to other federal, state, local and tribal authorities; (2) the feasibility of developing emergency discharge control systems that would function in the event of full or partial separations or failures of pipes and hoses; (3) the ability of the industry to meet a possible 1–, 2–, or 3-year retrofit schedule; (4) standards for the qualification, testing, and use of hoses used in unloading; and (5) safety procedures for persons performing unloading operations. To date, RSPA has received over 150 comments to the ANPRM. The comment period closed October 17, 1997.

II. Negotiated Rulemaking

RSPA has analyzed the comments received for the December 10 final rule and the ANPRM and believes that this proposed rulemaking is a good candidate for negotiated rulemaking. The safety issues are fairly well-defined, as are the interests that would be affected by a proposed rule. Moreover, RSPA believes that the face-to-face discussion and open exchange of ideas that occur during a negotiated rulemaking may promote more effective communication and development of creative solutions. Particularly in light of the ongoing litigation, the traditional notice and comment process for regulations development may not result in a solution acceptable to all affected interests.

In a negotiated rulemaking, representatives of interests that will be affected by a regulation meet to discuss the safety problem and related issues and identify potential solutions. The group attempts to reach consensus on a proposed solution and prepares a recommendation for a proposed rule for consideration by the agency. This inclusive process is intended to make the rule acceptable to all affected interests and to preclude filing of petitions for reconsideration or legal challenges that can follow promulgation of a final rule.

The Negotiated Rulemaking Act of 1990, 5 U.S.C. § 561 *et seq.*, establishes a framework for conducting negotiated rulemakings. In September 1993, the National Performance Review issued a recommendation encouraging consensus-based rulemaking (REG 03). President Clinton issued Executive Order (EO) 12866 (58 FR 51735, October 4, 1993), which states the need to reform the current regulatory process into one that is effective, consistent, and understandable. Section 6(a) of the EO charges government agencies with providing the public meaningful participation in the regulatory process. On May 1, 1998, President Clinton issued a memorandum to heads of executive departments and agencies encouraging greater use of negotiated rulemaking.

Negotiated rulemakings have been used successfully by the Department of Transportation, including the Federal Aviation Administration, the United States Coast Guard, the Federal Highway Administration, and the National Highway Traffic Safety Administration. RSPA will soon publish an NPRM addressing the qualification of pipeline personnel that was developed through negotiated rulemaking. The Environmental Protection Agency and the Occupational Safety and Health Administration have also successfully used the process.

The Negotiated Rulemaking Act, 5 U.S.C. § 563(a), recommends that an agency considering the feasibility of regulatory negotiations to resolve a specific issue should consider whether:

(1) There is a need for the rule.

(2) There are a limited number of identifiable interests.

(3) These interests can be adequately represented by persons willing to negotiate in good faith to reach a consensus.

(4) There is a reasonable likelihood that the committee will reach consensus within a fixed period of time.

(5) The negotiated rulemaking procedure will not unreasonably delay the notice of proposed rulemaking.

(6) The agency has adequate resources and is willing to commit such resources to the process.

(7) The agency is committed to use the result of the negotiation in formulating a proposed rule if at all possible.

The Act authorizes an agency to use the services of a convener to assist it to determine the feasibility of regulatory negotiation in specific instances (5 U.S.C. § 563(b)). RSPA contracted with

a convener to make this determination for a rulemaking that would resolve the safety issues that were the subject of the August 18, 1997, ANPRM. With RSPA input, the convener identified interests that will be significantly affected by a proposed rule and conducted discussions with persons representing these interests to identify issues of concern. Based on these discussions, the convener concluded that a negotiated rulemaking is feasible and appropriate and has a reasonable likelihood of success. A copy of the convener's final report has been placed in Docket No. RSPA–97–2718 (HM–225A).

Based on the recommendation of the convener, RSPA has decided to charter a negotiated rulemaking committee (Committee) under the Federal Advisory Committee Act (FACA; 5 U.S.C. App. § 1) to develop a proposed rule for preventing and mitigating unintentional releases during the unloading of DOT specification MC 330 and MC 331 CTMVs that transport and deliver liquefied compressed gases.

III. Procedures and Guidelines

The following proposed procedures and guidelines will apply to this process, subject to appropriate changes made as a result of comments on this Notice or as determined to be necessary during the negotiating process.

(A) Notice of Intent to Establish Advisory Committee and Request for Comment

In accordance with the requirements of FACA, an agency of the federal government cannot establish or utilize a group of people in the interest of obtaining consensus advice or recommendations unless that group is chartered as a federal advisory committee. It is the purpose of this Notice to indicate RSPA's intent to create a federal advisory committee, to identify the issues involved in the rulemaking, to identify the interests affected by the rulemaking, to identify potential participants who will adequately represent those interests, and to ask for comment on the use of regulatory negotiation and on the identification of the issues, interests, procedures, and participants.

(B) Facilitator

Pursuant to § 566 of the Negotiated Rulemaking Act, a facilitator will be selected to serve as an impartial chair of the meetings; assist committee members to conduct discussions and negotiations; and manage the keeping of minutes and records as required by FACA. RSPA is currently considering persons to serve as facilitator for the negotiating group. This individual will chair the negotiations, may offer alternative suggestions toward the desired consensus, will help participants define and reach consensus, and will determine the feasibility of negotiating particular issues.

(C) Representation

The Committee will include representatives from DOT and from the organizations and interests listed below. Each representative may also name an alternate, who will be encouraged to attend all Committee meetings and will serve in place of the representative if necessary. The DOT representative is the Designated Federal Official (DFO) as required by FACA (5 U.S.C. App. § 10) and will participate in the deliberations and activities of the Committee with the same rights and responsibilities as other Committee members. The DFO will be authorized to fully represent the agency in the discussions and negotiations of the Committee.

RSPA intends to invite the following organizations and interests to participate in the negotiated rulemaking by identifying an individual to serve as a member of the Committee. The organizations listed have been contacted by the convener and have indicated a willingness to serve on the Committee. RSPA believes that, in addition to the organizations listed, there are additional interests that should be included on the Committee. RSPA recognizes that it may be difficult for the interests not directly associated with a trade association or organization to identify an appropriate individual to represent them and invites comments on how best to assure that they are adequately represented on the Committee. RSPA will host a meeting in June 1998 (see below) at which those with a common interest in the proposed rule will be encouraged to meet and agree on a representative to the Committee.

The organizations and interests that should participate in the negotiated rulemaking are:

1. National Propane Gas Association.
2. The Fertilizer Institute.
3. National Tank Truck Carriers, Inc.
4. National Fire Protection Association.
5. Small businesses that transport and deliver propane, anhydrous ammonia, and other liquefied compressed gases.
6. Large businesses that transport and deliver propane, anhydrous ammonia, and other liquefied compressed gases.
7. Manufacturers of DOT MC 330 and MC 331 specification CTMVs used to transport liquefied compressed gases.
8. State safety regulatory agencies.
9. State safety enforcement agencies.
10. State/local emergency response and fire services agencies.

RSPA will consider applications for representation from organizations or interests not appropriately represented by those listed above. Please identify such interests and organizations if they exist and explain why such organizations and interests should have separate representation on the Committee.

RSPA is also considering how best to include manufacturers of cargo tank components, such as internal self-closing stop valves, emergency discharge control systems, and remote shut-off systems, in the negotiated rulemaking process. RSPA believes that component manufacturers have technical expertise that would be extremely valuable to the Committee's deliberations. The convener's report examined several options for integrating component manufacturers into the negotiated rulemaking process. The convener recommended that they participate as members of work groups that the Committee may establish to gather information and develop proposals for specific issues related to the rulemaking, but not as members of the Committee itself. RSPA has tentatively decided to accept this recommendation because it would allow all interested parties to have a significant role in discussions leading to improved understanding of technical issues and possibilities, while leaving ultimate decisions to be made by the agency and those directly responsible for compliance with applicable regulations. However, RSPA recognizes that other approaches could accomplish the same end and requests comments on the most appropriate role for component manufacturers on the Committee.

(D) Applications for Membership

Each application for membership or nomination to the Committee should include: (i) The name of the applicant or nominee and the interest(s) such person would represent; (ii) evidence that the applicant or nominee is authorized to represent parties related to the interest(s) the person proposes to represent; and (iii) a written commitment that the applicant or nominee would participate in good faith. Please be aware that each individual or organization affected by a final rule need not have its own representative on the Committee. Rather, each interest must be adequately represented, and the Committee should be fairly balanced.

(E) Good Faith

Participants must be committed to negotiate in good faith. Therefore, it is important that senior individuals within each interest group be designated to represent that interest. No individual will be required to ''bind'' the interests he or she represents, but the individual should be able to represent the interest with confidence. For this process to be successful, the interests represented should be willing to accept the final Committee product.

(F) Notice of Establishment

After evaluating comments received as a result of this notice, RSPA will issue a notice announcing the establishment and composition of the Committee, unless it determines that such action is inappropriate in light of comments received. After the Committee is chartered, the negotiations will begin.

(G) Administrative Support and Meetings

Staff support will be provided by RSPA, and meetings will take place in Washington, DC, unless agreed otherwise by the Committee.

(H) Consensus

The purpose of the Committee is to develop consensus on an outline for a proposed rule. ''Consensus'' means the unanimous concurrence among the interests represented on the Committee, unless the Committee explicitly adopts a different definition.

(I) Notice of Proposed Rulemaking

The Committee's objective is to prepare a report containing an outline of its recommendations for a notice of proposed rulemaking. This report may also include suggestions for specific preamble and regulatory language based on the Committee's recommendations, as well as information relevant to a regulatory evaluation and an evaluation of the impacts of the proposal on small businesses. To this end, RSPA expects the Committee to address cost/benefit, paperwork reduction, and regulatory flexibility requirements. If consensus cannot be achieved for some issues, the report will identify the areas of agreement and disagreement, and explanations for any disagreement. RSPA will use the Committee report to draft a notice of proposed rulemaking, regulatory evaluation, and other analyses, as appropriate.

RSPA will accept the Committee proposal unless it is inconsistent with the statutory authority of the agency or other legal requirements or does not adequately address public safety. In that event, the preamble to an NPRM addressing the issues that were the subject of the negotiations will explain the reasons for the agency decision to reject the Committee recommendations.

(J) Final Rule

RSPA may elect to ask the Committee to assist in the evaluation of comments received to the NPRM, depending on the nature of the comments received.

(K) Tentative Schedule

RSPA plans to host an organizational meeting to discuss Committee membership, procedural matters, and ground rules in advance of the first meeting of the Committee. Once the Committee is established and selected, RSPA will publish a notice announcing the first two meetings of the Committee in the **Federal Register**. Notice of subsequent meetings will also be published in the **Federal Register**.

RSPA anticipates that the Committee will meet for up to five two-day sessions beginning in July 1998. If the Committee establishes working groups to support its work, additional meetings for the working groups may be necessary. RSPA expects the Committee to reach consensus and prepare a report recommending a proposed rule within six months of the first meeting. The timeframe for the Committee to complete its work is short because the emergency interim final rule expires July 1, 1999. RSPA expects to publish an NPRM based on the Committee's recommendations by February 15, 1999, and a final rule by May 1, 1999. If unforeseen delays in the anticipated schedule occur, the Research and Special Programs Administrator may agree to an extension of time if the consensus of the Committee is that additional time will result in agreement. The process may end earlier if the facilitator or DFO so recommends.

(L) Committee Procedures

Under the general guidance of the facilitator, and subject to legal requirements, the Committee will establish detailed procedures for the meetings. Meetings of the Committee will be open to the public. Any person attending the Committee meetings may address the Committee if time permits or file statements with the Committee.

(M) Record of Meetings

In accordance with FACA requirements, the facilitator will prepare minutes of all Committee meetings. These minutes will be placed in the public docket for this rulemaking.

IV. Key Issues for Negotiation

RSPA has reviewed written comments, petitions, incident reports, and industry operating practices, and has engaged in extensive dialogue on the issues related to the safe unloading of liquefied compressed gases from CTMVs. Based on this information, RSPA has tentatively identified major issues that should be considered in this negotiated rulemaking. Issues related to transportation and delivery of liquefied compressed gases in CTMVs not specifically listed in this Notice may be addressed as they arise in the course of the negotiation. RSPA understands that these issues are interrelated and is open to a systems safety approach for managing risk associated with unloading liquefied compressed gases. RSPA invites comments concerning the appropriateness of these issues for consideration and whether other issues should be added. Note that some of these issues were raised in the February 19, 1997, emergency interim final rule and the August 18, 1997, ANPRM.

A. Prevention of Unintentional Releases

The Committee should examine possible preventive measures to reduce or eliminate the incidence of unintentional releases during unloading. For example, some commenters to the ANPRM have suggested that RSPA adopt a rigorous hose management system that assures that delivery hoses and lines meet high standards for quality, strength, and durability, and that requires periodic examination and testing to assure continued suitability for use in the transfer of high risk hazardous materials. Advocates of such a system say that it could significantly reduce the number of unloading incidents related to failures in hoses or hose assemblies. Similarly, the Committee should consider whether there are preventive measures, such as daily inspections or periodic testing, that should be implemented for other parts of the cargo tank delivery system, including pumps, valves, and piping.

B. Detection of Unintentional Releases

Preventive measures alone cannot assure the safety of cargo tank unloading operations. Despite the best efforts of the industry and the government, accidents will happen, and unintentional releases of high risk hazardous materials such as propane or anhydrous ammonia will occur. The Committee thus should consider methods to assure that unintentional releases can be detected and controlled. One such detection method is provided

by the current regulatory requirement for continual visual observation of the cargo tank throughout the unloading process. Alternatives include remote monitoring and signaling systems, such as sensors, alarms, and electronic surveillance equipment, or ''patrolling'' whereby the person attending the unloading operation moves between the storage tank and the cargo tank to assure that each is monitored throughout the unloading process.

C. Mitigation of Unintentional Releases

Once a leak has been detected, methods to prevent catastrophic consequences are critical. A passive system for shutting down unloading when a leak has been detected operates automatically, that is, without human intervention. Examples include excess flow valves, which are intended to close the internal self-closing stop valve if the flow rate exceeds a threshold level, and thermal links, which are intended to close the internal self-closing stop valve if the temperature reaches a threshold level. A remote system provides a means to shut down cargo tank unloading operations using a device that is located on the CTMV but away from the valve(s) that it operates. Many CTMVs have remote shut-offs located near the vehicle cab. The remote shut-off may be manually activated. An off-truck remote system includes a portable device that can shut down cargo tank unloading operations away from the CTMV. An off-truck remote is manually activated. The Committee should evaluate alternatives with a view towards determining which methods or combination of methods provide the most cost-effective means for controlling unintentional releases during cargo tank unloading operations.

IV. Organizational Meeting

RSPA will host a meeting to discuss issues related to establishment of a Negotiated Rulemaking Advisory Committee for Safety Standards for Preventing and Mitigating Unintentional Releases During the Unloading of Cargo Tank Motor Vehicles in Liquefied Compressed Gas Service. The meeting is scheduled for June 23–24, 1998, in Room 2230 of the U.S. Department of Transportation Headquarters Building, 400 Seventh Street, S.W., Washington, DC 20590. On June 23, the meeting will begin at 9:30 a.m. and will adjourn at 4:00 p.m.; on June 24, the meeting will begin at 9:30 a.m. and will adjourn at 12:30 p.m. RSPA invites all interested persons to attend. The meeting agenda will include discussion of the negotiated rulemaking process, designation of members to represent identified interests, ground rules for Committee deliberations, and procedural matters. Those who plan to attend this meeting should notify Jennifer Karim or Susan Gorsky, 202–366–8553, Office of Hazardous Materials Standards, Research and Special Programs Administration, Department of Transportation, 400 Seventh Street, S.W., Washington, DC 20590–0001 by June 19, 1998.

Issued in Washington, DC on June 1, 1998, under authority delegated in 49 CFR Part 1.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety, Research and Special Programs Administration.

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LIST OF PUBLIC LAWS

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H.R. 2472/P.L. 105–177

To extend certain programs under the Energy Policy and Conservation Act. (June 1, 1998; 112 Stat. 105)

Last List June 2, 1998

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