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Wednesday
March 24, 1999

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Contents

Federal Register

Vol. 64, No. 56

Wednesday, March 24, 1999

Agriculture Department
See Animal and Plant Health Inspection Service
See Cooperative State Research, Education, and Extension Service

Animal and Plant Health Inspection Service
PROPOSED RULES
Viruses, serums, toxins, etc.:
Veterinary antibody products; meeting, 14156

Children and Families Administration
PROPOSED RULES
Head Start Program:
Selection and funding of grantees; policies and procedures, 14202–14203

Coast Guard
RULES
Ports and waterways safety:
Storrow Drive Connector Bridge, Charles River, MA; safety zone
Correction, 14306

Commerce Department
See Foreign-Trade Zones Board
See International Trade Administration
See National Oceanic and Atmospheric Administration

Commodity Futures Trading Commission
PROPOSED RULES
Foreign futures and options transactions:
Access to electronic boards of trade; automated trading systems use, 14159–14178

Consumer Product Safety Commission
PROPOSED RULES
Consumer Product Safety Act and Federal Hazardous Substances Act:
Bunk beds; safety standards, 14158–14159

Cooperative State Research, Education, and Extension Service
PROPOSED RULES
Grants:
Special Research Program, 14347–14350

Corporation for National and Community Service
RULES
Foster Grandparent Program, 14123–14133
Retired and Senior Volunteer Program, 14133–14141
Senior Companion Program, 14113–14123
NOTICES
Grants and cooperative agreements; availability, etc.:
AmeriCorps programs—
AmeriCorps*State and America Reads programs; allowable cost per full-time equivalent for Indian Tribes, 14216

Defense Department
See Navy Department
NOTICES
Agency information collection activities:
Proposed collection; comment request, 14216–14217

Drug Enforcement Administration
NOTICES
Applications, hearings, determinations, etc.:
Funches, Anthony D., 14267–14269
Pierson, Jacqueline Lee, et al., 14269–14273

Education Department
NOTICES
Agency information collection activities:
Proposed collection; comment request; correction, 14306
Grants and cooperative agreements; availability, etc.:
Technology Innovation Challenge Program, 14223–14224
Meetings:
National Assessment Governing Board, 14224–14225

Employment and Training Administration
NOTICES
Reports and guidance documents; availability, etc.:
Performance accountability measurement system; consultation papers, 14335–14345

Energy Department
See Federal Energy Regulatory Commission
See Western Area Power Administration
PROPOSED RULES
Acquisition regulations:
Costs associated with whistleblower actions, 14206–14207
NOTICES
Meetings:
Secretary of Energy Advisory Board, 14225

Environmental Protection Agency
RULES
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Azoxystrobin, 14106–14113
Cinnamaldehyde; correction, 14098–14099
Clopyralid, 14101–14104
Imidacloprid, 14104–14106
Norflurazon, 14099–14101
PROPOSED RULES
Hazardous waste program authorizations:
Massachusetts, 14201–14202
NOTICES
Agency information collection activities:
Proposed collection; comment request, 14229–14231
Meetings:
Clean Air Act Advisory Committee, 14231–14232
Environmental Laboratory Advisory Board, 14232
Science Advisory Board, 14232–14233
Pesticide registration, cancellation, etc.:
Novartis Crop Protection, 14233–14234
Sureco Inc. et al., 14234–14237
Zeneca Ag Products, 14237
Pesticides; experimental use permits, etc.:
University of Rhode Island, 14238

Executive Office of the President
See Presidential Documents

Federal Aviation Administration
RULES
Airworthiness directives:
Williams International, L.L.C., 14097–14098
Class D and Class E airspace; correction, 14306

Federal Communications Commission
RULES
Common carrier services:
Computer III further remand proceedings; Bell Operating Co. enhanced services provision; Computer III and Open Network Architecture safeguards, etc., 14141–14148
PROPOSED RULES
Common carrier services:
Inter-carrier compensation for Internet service provider (ISP)-bound traffic, 14203–14206
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 14238
Common carrier services:
Inter-carrier compensation for Internet service provider (ISP)-bound traffic; clarification, 14239–14243
Toll free service access codes—
888 right-of-first refusal process ended, 14243–14244
Meetings:
North American Numbering Council, 14244

Federal Deposit Insurance Corporation
NOTICES
Meetings; Sunshine Act, 14245

Federal Energy Regulatory Commission
NOTICES
Environmental statements; availability, etc.:
Alabama Power Co., 14227
Applications, hearings, determinations, etc.:
Clear Creek Storage Co., L.L.C., 14225–14226
Reliant Energy Gas Transmission Co., 14226
Southern Natural Gas Co., 14226, 14227
Texas Eastern Transmission Corp., 14227

Federal Highway Administration
NOTICES
Environmental statements; notice of intent:
Stark, Columbiana, and Carroll Counties, OH, 14302–14303

Federal Maritime Commission
NOTICES
Freight forwarder licenses:
Menlo Logistics Global Transportation Services, Inc., et al., 14245

Federal Reserve System
NOTICES
Agency information collection activities:
Proposed collection; comment request, 14245–14246

Federal Trade Commission
PROPOSED RULES
Electronic media; rules and guides interpretation, participation procedures, and advertisements request; workshop, 14156–14158
NOTICES
Prohibited trade practices:
Intel Corp., 14246–14249
Medtronic Inc., 14249–14251

Fish and Wildlife Service
RULES
Alaska National Wildlife Refuges:
Administrative and visitor facility sites; public safety, government property protection, and fish and wildlife regulations, 14149–14151
Kenai National Wildlife Refuge; seasonal closure of Moose Range Meadows public access easements, 14151–14154
PROPOSED RULES
Endangered and threatened species:
Abutilon eremitopetalum, etc. (245 Hawaiian plants); critical habitat designation reevaluation, 14209–14210

Food and Drug Administration
RULES
Medical devices:
Corrections and removals; authority citation; CFR correction, 14098
Organization, functions, and authority delegations:
Compliance Office, Center for Drug Evaluation and Research, Director and Deputy Director; CFR correction, 14098
PROPOSED RULES
Food for human consumption:
Food labeling—
Dietary supplements; use of health claims based on authoritative statements; meeting, 14178–14180
Radiological health:
Laser products; performance standards, 14180–14200
NOTICES
Human drugs:
New drug applications—
Vale Chemical Co., Inc., et al.; approval withdrawn, 14252–14253

Foreign-Trade Zones Board
NOTICES
Applications, hearings, determinations, etc.:
New York, 14212
Ohio, 14212
Texas, 14212–14213
Virginia, 14213

Health and Human Services Department
See Children and Families Administration
See Food and Drug Administration
See National Institutes of Health
NOTICES
Grants and cooperative agreements; availability, etc.:
Ricky Ray Hemophilia Relief Fund Act of 1998; payment petitions filing procedures, 14251–14252

Indian Affairs Bureau
NOTICES
Grants and cooperative agreements; availability, etc.:
Traffic safety on Indian reservations, 14259–14261

Interior Department
See Fish and Wildlife Service
See Indian Affairs Bureau
See Land Management Bureau
See National Indian Gaming Commission
See National Park Service
NOTICES
Privacy Act:
Systems of records, 14257–14259

Internal Revenue Service
PROPOSED RULES
Income taxes:
Low-income housing credit; compliance monitoring and miscellaneous issues
Correction, 14306

International Trade Administration
NOTICES
Antidumping:
Oil country tubular goods from—
Mexico, 14213–14214
Export trade certificates of review, 14214–14215

International Trade Commission
NOTICES
Import investigations:
Agricultural tillage tools from—
Brazil, 14265
Andean Trade Preference Act; effect on U.S. economy and on Andean drug crop eradication; annual report, 14265–14266
Caribbean Basin Economic Recovery Act; impact on U.S. industries and consumers; annual report, 14266
Textiles, etc., from—
Colombia et al., 14266–14267

Justice Department
See Drug Enforcement Administration

Labor Department
See Employment and Training Administration
See Mine Safety and Health Administration

Land Management Bureau
NOTICES
Committees; establishment, renewal, termination, etc.:
Eastern Washington Resource Advisory Council, 14261
Public land orders:
Alaska, 14261–14262
Colorado, 14262
Realty actions; sales, leases, etc.:
California, 14262–14263
Recreation management restrictions, etc.:
Headwaters Forest Reserve, CA; interim management guidelines, 14263–14264

Mine Safety and Health Administration
PROPOSED RULES
Metal and nonmetal mine safety and health:
Underground mines—
Diesel particulate matter exposure of miners, 14200–14201

National Aeronautics and Space Administration
RULES
Acquisition regulations:
Labor disputes; contracts for Government notification, 14148–14149
NOTICES
Inventions, Government-owned; availability for licensing, 14273

National Highway Traffic Safety Administration
PROPOSED RULES
Motor vehicle safety standards:
Side impact protection; inflatable restraint systems; benefits and risks; meeting, 14207–14209
NOTICES
Agency information collection activities:
Proposed collection; comment request, 14303–14304

National Indian Gaming Commission
NOTICES
Indian Gaming Regulatory Act:
Class III tribal gaming ordinances; approval; correction, 14273

National Institutes of Health
NOTICES
Meetings:
National Cancer Institute, 14253
National Center for Research Resources, 14253–14254
National Institute of Allergy and Infectious Diseases, 14255
National Institute of General Medical Sciences, 14255
National Institute of Neurological Disorders and Stroke, 14254
National Institute on Deafness and Other Communication Disorders, 14255
National Library of Medicine, 14255–14256
Scientific Review Center, 14256–14257
Warren Grant Magnuson Clinical Center Board of Governors, 14257

National Oceanic and Atmospheric Administration
RULES
Endangered and threatened species:
Marine and anadromous species—
West coast chinook salmon, 14307–14328
Fishery conservation and management:
Alaska; fisheries of Exclusive Economic Zone—
Shallow-water species, 14155
Atlantic shark, 14154–14155
PROPOSED RULES
Endangered and threatened species:
Marine and anadromous species—
West coast chinook salmon, 14329–14333
Fishery conservation and management:
West Coast States and Western Pacific fisheries—
West coast salmon; correction, 14211
NOTICES
Meetings:
New England Fishery Management Council, 14215–14216

National Park Service
NOTICES
Agency information collection activities:
Proposed collection; comment request, 14264
Meetings:
Boston Harbor Islands Advisory Council, 14264–14265

Navy Department
NOTICES
Environmental statements; availability, etc.:
Base realignment and closure—
Naval Training Center San Diego, CA, 14217–14223

Nuclear Regulatory Commission
NOTICES
Environmental statements; availability, etc.:
Baltimore Gas & Electric Co., 14275–14276
Florida Power & Light Co., 14276–14277
Virginia Electric & Power Co., 14277–14278
Operating licenses, amendments; no significant hazards considerations; biweekly notices, 14278–14292

Applications, hearings, determinations, etc.:
Carolina Power & Light Co., 14273–14274
Duke Energy Corp., 14274–14275

Presidential Documents
PROCLAMATIONS
Special observances:
Poison Prevention Week, National (Proc. 7174), 14351–14354

Public Health Service
See Food and Drug Administration
See National Institutes of Health

Securities and Exchange Commission
NOTICES
Securities:
Suspension of trading—
Cosmos Ventures, Inc., 14293
Self-regulatory organizations; proposed rule changes:
National Association of Securities Dealers, Inc., 14293–14294
New York Stock Exchange, Inc., 14294–14300
New York Stock Exchange, Inc.; correction, 14306
Applications, hearings, determinations, etc.:
Innovative Medical Services, 14292–14293
International FiberCom, Inc., 14293

State Department
NOTICES
Foreign passports validity; list of countries, 14300–14301
International agreements:
Satellite telecommunications; international anti-bribery and fair competition laws, 14301
Passport travel restrictions, U.S.:
Iraq, 14301–14302

Surface Transportation Board
NOTICES
Rail carriers:
Cost recovery procedures—
Adjustment factor, 14304

Transportation Department
See Coast Guard
See Federal Aviation Administration
See Federal Highway Administration
See National Highway Traffic Safety Administration
See Surface Transportation Board
NOTICES
Aviation proceedings:
Hearings, etc.—
Wrangell Mountain Air, Inc., 14302

Treasury Department
See Internal Revenue Service

Veterans Affairs Department
NOTICES
Meetings:
Former Prisoners of War Advisory Committee, 14304–14305

Western Area Power Administration
NOTICES
Power rate adjustments:
Boulder Canyon Project; firm power services base charge, 14227–14228

Separate Parts In This Issue

Part II
Department of Commerce, National Oceanic and Atmospheric Administration, 14307–14333

Part III
Department of Labor, Employment and Training Administration, 14335–14345

Part IV
Department of Agriculture, Cooperative State Research, Education, and Extension Service, 14347–14350

Part V
The President, 14351–14354

Reader Aids
Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

CFR PARTS AFFECTED IN THIS ISSUE

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

3 CFR

Proclamations:

7174 14353

7 CFR

Proposed Rules:

3400 14348

9 CFR

Proposed Rules:

113 14156

14 CFR

39 14097
71 14306

16 CFR

Proposed Rules:

Ch. I 14156
1213 14158
1500 14158
1513 14158

17 CFR

Proposed Rules:

1 14159
30 14159

21 CFR

5 14098
806 14098

Proposed Rules:

101 14178
1010 14180
1040 14180

26 CFR

Proposed Rules:

1 14306

30 CFR

Proposed Rules:

57 14200

33 CFR

165 14306

40 CFR

180 (5 documents) 14098, 14099, 14101, 14104, 14106

Proposed Rules:

271 14201

45 CFR

1207 14113
1208 14123
1209 14133
2551 14113
2552 14123
2553 14133

Proposed Rules:

1302 14202

47 CFR

54 14141
64 14141

Proposed Rules:

51 14203

48 CFR

1822 14148

Proposed Rules:

970 14206

49 CFR

Proposed Rules:

571 14207

50 CFR

25 14149
36 (2 documents) 14149, 14151
223 14308
224 14308
678 14154
679 14155

Proposed Rules:

17 14209
223 14329
224 14329
660 14211

Rules and Regulations

Federal Register
Vol. 64, No. 56
Wednesday, March 24, 1999

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

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–ANE–36–AD; Amendment 39–11088; AD 99–07–04]

RIN 2120–AA64

Airworthiness Directives; Williams International, L.L.C. FJ44–1A Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Williams International, L.L.C. FJ44–1A turbofan engines, that requires removing the high pressure turbine (HPT) disk from service prior to accumulating a reduced cyclic life limit of 1,900 cycles since new (CSN) and replacing with a serviceable disk. As an option, the HPT nozzle can be modified, thereby increasing the HPT disk cyclic life limit from the new reduced cyclic life limit. This amendment is prompted by a revised life analysis conducted by the manufacturer after the failure of a similarly designed HPT disk. The actions specified by this AD are intended to prevent HPT disk rim failure, which could result in an uncontained engine failure and damage to the aircraft.

DATES: Effective May 24, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 24, 1999.

ADDRESSES: The service information referenced in this AD may be obtained from Williams Rolls, 2280 West Maple Road, P.O. Box 200, Walled Lake, MI 48390–0200; telephone (248) 960–2545, fax (248) 669–9515. This information may be examined at the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Patricia Bonnen, Aerospace Engineer, Chicago Aircraft Certification Office, FAA, Small Airplane Directorate, 2300 East Devon Avenue, Des Plaines, IL 60018; telephone (847) 294–7134, fax (847) 294–7834.

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 Williams International, L.L.C. FJ44–1A turbofan engines was published in the **Federal Register** on September 9, 1998 (63 FR 48140). That action proposed to require removing the high pressure turbine (HPT) disk from service prior to accumulating a reduced cyclic life limit of 1,900 cycles since new (CSN) and replacing with a serviceable disk. As an option, the HPT nozzle can be modified, thereby increasing the HPT disk cyclic life limit from the new reduced cyclic life limit.

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.

There are approximately 223 engines of the affected design in the worldwide fleet. The FAA estimates that 165 engines installed on aircraft of U.S. registry will be affected by this AD. The cost of removing a disk earlier than the original life-limit rather than reworking the disk is $12,546 per engine. The costs of reworking the HPT nozzle assembly to obtain increased HPT life are substantially less than the costs of replacement of the HPT disk. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $2,070,090 assuming all disks are replaced. The actual total cost to U.S. operators, however, will be less depending on how many operators exercise the rework option. In addition, the manufacturer may reimburse operators for the costs of removing disks earlier than the original life limit, reducing even further the total cost impact for U.S. operators.

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

99–07–04 Williams International, L.L.C.: Amendment 39–11088. Docket 98–ANE–36–AD.

Applicability: Williams International, L.L.C. FJ44–1A turbofan engines, installed on but not limited to Cessna 525 series aircraft.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent high pressure turbine (HPT) disk rim failure, which could result in an uncontained engine failure and damage to the aircraft, accomplish the following:

(a) Prior to accumulating 1,900 cycles since new (CSN), remove from service HPT disk, part number (P/N) 55291, and replace with a serviceable part.

(b) As an option to paragraph (a), modify the HPT nozzle assembly and remark the HPT disk and assembly with new P/Ns in accordance with Williams Rolls Service Bulletin (SB) FJ44–72–36, dated October 21, 1997.

Note 2: The low cycle fatigue retirement lives for the HPT disks remarked with new P/Ns in accordance with paragraph (b) of this AD may be found in Williams Rolls Alert SB FJ44–A72–38, dated October 21, 1997.

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

Note 3: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Chicago Aircraft Certification Office.

(d) Thereafter, except as provided in paragraph (c) of this AD, no alternative replacement times or life limits may be approved for HPT disk, P/N 55291.

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

(f) The actions required by this AD shall be done in accordance with the following Williams Rolls SBs:

Document No	Pages	Date
FJ44–A72–38	1–2	October 21, 1997.
Total Pages: 2.		
FJ44–72–36	1–9	October 21, 1997.
Total Pages: 9.		

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 Williams Rolls, 2280 West Maple Road, P.O. Box 200, Walled Lake, MI 48390–0200; telephone (248) 960–2545, fax (248) 669–9515. Copies may be inspected at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(g) This amendment becomes effective on May 24, 1999.

Issued in Burlington, Massachusetts, on March 16, 1999.

David A. Downey,

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

[FR Doc. 99–6978 Filed 3–23–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 5

Delegations of Authority and Organization

CFR Correction

In Title 21 of the Code of Federal Regulations, parts 1 to 99, revised as of Apr. 1, 1998, page 52, § 5.60 is corrected by revising paragraph (b)(8) as follows:

§ 5.60 Required and discretionary postmarket surveillance.

* * * * *

(b) * * *

(8) The Director and Deputy Director, Office of Compliance, CDER.

* * * * *

[FR Doc. 99–55512 Filed 3–23–99; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 806

Medical Device Corrections and Removals

CFR Correction

In Title 21 of the Code of Federal Regulations, parts 800 to 1299, revised as of Apr. 1, 1998, page 61, the authority for part 806 is correctly revised to read ''21 U.S.C. 352, 360, 360i, 360j, 371, 374.''

[FR Doc. 99–55513 Filed 3–23–99; 8:45 am]

BILLING CODE 1505–01–D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300769A; FRL–6069–2]

RIN 2070–AB78

Cinnamaldehyde; Exemption from the requirement of a Tolerance; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: EPA published in the **Federal Register** of February 17, 1999, a document establishing an exemption from the requirement of tolerance for residues of the biochemical cinnamaldehyde in or on all food commodities when applied as a broad spectrum fungicide/insecticide/algaecide in accordance with good agricultural practices. A sentence should have been removed from § 180.1156. This document corrects that section by removing the language.

DATES: This correction becomes effective February 17, 1999.

FOR FURTHER INFORMATION CONTACT: By mail: Diana M. Horne, c/o Product Manager (PM) 90, Biopesticides and Pollution Prevention Division (7511C), U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number and e-mail address: Rm. 902, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA22202, (703) 308–8367; e-mail: horne.diana@epa.gov.

SUPPLEMENTARY INFORMATION: EPA published a document on February 17, 1999 (64 FR 7801) (FRL–6049–9), establishing an exemption from the requirement of tolerance for residues of the biochemical cinnamaldehyde in or on all food commodities when applied as a broad spectrum fungicide/insecticide/algaecide in accordance with good agricultural practices.The Interregional Research Project No. 4 (IR-4) submitted a petition to EPA on behalf of Proguard, Inc. requesting the exemption from the requirement of a tolerance. In publishing the revision to § 180.1156, a sentence that should have been removed was inadvertently left in. This document will correct the section by removing that sentence.

I. Regulatory Assessment Requirements

This final rule does not impose any new requirements. It only implements a technical correction to the Code of Federal Regulations (CFR). As such, this action does not require review by the Office of Management and Budget (OMB) under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993), the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not impose any enforceable duty, contain any unfunded mandate, or impose any significant or unique impact on small governments as described in the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Nor does it require prior consultation with State, local, and tribal government officials as specified by Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993) and Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998), or special consideration of environmental justice related issues under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Pub. L. 104–113, section 12(d) (15 U.S.C. 272 note). In addition, since this action is not subject to notice-and-comment requirements under the Administrative Procedure Act (APA) or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*).

II. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the Agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this rule in the **Federal Register**. This is a technical corection to the **Federal Register** and is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

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

Dated: March 8, 1999.

Kathleen D. Knox,

Acting Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

In FR Doc. 99–3663 published on February 17, 1999 (64 FR 7801), make the following correction:

§ 180.1156 [Corrected]

On page 7804, in the third column, in § 180.1156 remove the last sentence which reads: ''The existing tolerance exemption on mushrooms (40 CFR 180.1156) is hereby removed.''

[FR Doc. 99–6897 Filed 3–23–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300803; FRL–6063–2]

RIN 2070–AB78

Norflurazon; Extension of Tolerance for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation extends a time-limited tolerance for the combined residues of the herbicide norflurazon and its desmethyl metabolites in or on bermudagrass forage and hay at 2 and 3 parts per million (ppm) respectively, for an additional 1-year period. This tolerance will expire and is revoked on November 30, 2000. This action is in response to EPA's granting of emergency exemptions under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of the pesticide on bermudagrass. Section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under FIFRA section 18.

DATES: This regulation becomes effective March 24, 1999. Objections and requests for hearings must be received by EPA, on or before May 24, 1999.

ADDRESSES: Written objections and hearing requests, identified by the docket control number [OPP–300803], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled ''Tolerance Petition Fees'' and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300803], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epa.gov. Copies of electronic objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All copies of electronic objections and hearing requests must be identified by the docket control number [OPP–300803]. No Confidential Business Information (CBI) should be submitted through e-mail. Copies of electronic objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Libby Pemberton, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 280, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703)–308–9364, pemberton.libby@epa.gov.

SUPPLEMENTARY INFORMATION: EPA issued a final rule, published in the **Federal Register** of April 11, 1997 (62

FR 17742–17748) (FRL–5598–2), which announced that on its own initiative under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a and (l)(6), as amended by the Food Quality Protection Act of 1996 (FQPA) (Pub. L. 104–170) it established a time-limited tolerance for the combined residues of norflurazon and its metabolites in or on bermudagrass forage and hay at 2 and 3 ppm, respectively, with an expiration date of November 30, 1998. EPA extended the expiration date of these tolerances to November 30, 1999 in a **Federal Register** notice published February 25, 1998 (63 FR 9425–9427) (FRL–5770–8). EPA established the tolerance because section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under FIFRA section 18. Such tolerances can be established without providing notice or period for public comment.

EPA received a request to extend the use of norflurazon on bermudagrass for this years growing season due to the continuation of the emergency situation in Alabama, Georgia, and Mississippi. After having reviewed the submission, EPA concurs that emergency conditions exist. EPA has authorized under FIFRA section 18 the use of norflurazon on bermudagrass for control of grassy weeds.

EPA assessed the potential risks presented by residues of norflurazon in or on bermudagrass forage and hay. In doing so, EPA considered the safety standard in FFDCA section 408(b)(2), and decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the safety standard and with FIFRA section 18. The data and other relevant material have been evaluated and discussed in the final rule of April 11, 1997. Based on that data and information considered, the Agency reaffirms that extension of the time-limited tolerance will continue to meet the requirements of section 408(l)(6). Therefore, the time-limited tolerance is extended for an additional 1-year period. EPA will publish a document in the **Federal Register** to remove the revoked tolerance from the Code of Federal Regulations (CFR). Although this tolerance will expire and is revoked on November 30, 2000, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on bermudagrass forage and hay after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA and the application occurred prior to the revocation of the tolerance. EPA will take action to revoke this tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

I. Objections and Hearing Requests

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

Any person may, by May 24, 1999, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given under the ''ADDRESSES'' section (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). EPA is authorized to waive any fee requirement ''when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection.'' For additional information regarding tolerance objection fee waivers, contact James Tompkins, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 239, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305–5697, tompkins.jim@epa.gov. Requests for waiver of tolerance objection fees should be sent to James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

II. Public Record and Electronic Submissions

EPA has established a record for this regulation under docket control number [OPP–300803] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 119 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Objections and hearing requests may be sent by e-mail directly to EPA at: opp-docket@epa.gov.

E-mailed objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this regulation, as well as the public version, as described in this unit will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also

include all comments submitted directly in writing. The official record is the paper record maintained at the Virginia address in ''ADDRESSES'' at the beginning of this document.

III. Regulatory Assessment Requirements

A. Certain Acts and Executive Orders

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

In addition, since tolerances and exemptions that are established under section 408(l)(6) of FFDCA, such as the tolerance/exemption in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

B. Executive Order 12875

Under Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to OMB a description of the extent of EPA's prior consultation with representatives of affected State, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local, and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.''

Today's rule does not create an unfunded Federal mandate on State, local, or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

C. Executive Order 13084

Under Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

IV. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the Agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

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

Dated: March 5, 1999.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180–[AMENDED]

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

Authority: 21 U.S.C. 321(q), 346a and 371.

§ 180.356 [Amended]

2. In § 180.356, by amending paragraph (b) in the table, for the commodities ''Grasses, Bermuda, Forage'' and ''Grasses, Bermuda, Hay'' by changing the date ''11/30/99'' to read ''11/30/00''.

[FR Doc. 99–6896 Filed 3–23–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300802; FRL–6066–2]

RIN 2070–AB78

Clopyralid; Extension of Tolerance for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation extends a time-limited tolerance for residues of the herbicide clopyralid in or on cranberries at 2 part per million (ppm) for an additional 18–month period. This tolerance will expire and is revoked on July 31, 2001. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of the pesticide on cranberries. Section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under FIFRA section 18.

DATES: This regulation becomes effective March 24, 1999. Objections and requests for hearings must be received by EPA, on or before May 24, 1999.

ADDRESSES: Written objections and hearing requests, identified by the docket control number [OPP–300802], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled ''Tolerance Petition Fees'' and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300802], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, Crystal Mall 2 (CM #2), 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epa.gov. Copies of electronic objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All copies of electronic objections and hearing requests must be identified by the docket control number [OPP–300802]. No Confidential Business Information (CBI) should be submitted through e-mail. Copies of electronic objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Libby Pemberton, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 280, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA, 703 308–9364, pemberton.libby@epa.gov.

SUPPLEMENTARY INFORMATION: EPA issued a final rule, published in the **Federal Register** of March 12, 1997 (62 FR 11360) (FRL–5593–1), which announced that on its own initiative under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a and (l)(6), as amended by the Food Quality Protection Act of 1996 (FQPA) (Pub. L. 104–170) it established a time-limited tolerance for the residues of clopyralid or on cranberries at 2 ppm, with an expiration date of July 31, 1998. EPA extended the expiration date of the tolerance to July 31, 2000, published in the **Federal Register** of April 29, 1998 (63 FR 23392) (FRL–5786–9). EPA established the tolerance because section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under FIFRA section 18. Such tolerances can be established without providing notice or period for public comment.

EPA received a request to extend the use of clopyralid on cranberries for this year growing season due to the continued need for control of various weeds. Cancellations of the most effective registered alternatives have left growers with few tools to control weeds in a crop which cannot be cultivated. After having reviewed the submission, EPA concurs that emergency conditions exist. EPA has authorized under FIFRA section 18 the use of clopyralid on cranberries for control of various weeds in Wisconsin, Washington, Massachusetts and Oregon.

EPA assessed the potential risks presented by residues of clopyralid in or on cranberries. In doing so, EPA considered the safety standard in FFDCA section 408(b)(2), and decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the safety standard and with FIFRA section 18. The data and other relevant material have been evaluated and discussed in the final rule of March 12, 1997. Based on that data and information considered, the Agency reaffirms that extension of the time-limited tolerance will continue to meet the requirements of section 408(l)(6). Therefore, the time-limited tolerance is extended for an additional 18–month period. EPA will publish a document in the **Federal Register** to remove the revoked tolerance from the Code of Federal Regulations (CFR). Although this tolerance will expire and is revoked on July 31, 2001, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on cranberries after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA and the application occurred prior to the revocation of the tolerance. EPA will take action to revoke this tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

I. Objections and Hearing Requests

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

Any person may, by May 24, 1999, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given under the ''ADDRESSES'' section (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). EPA is authorized to waive any fee requirement ''when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to

the purpose of this subsection.'' For additional information regarding tolerance objection fee waivers, contact James Tompkins, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 239, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305–5697, tompkins.jim@epa.gov. Requests for waiver of tolerance objection fees should be sent to James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

II. Public Record and Electronic Submissions

EPA has established a record for this regulation under docket control number [OPP–300802] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Rm. 119 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Objections and hearing requests may be sent by e-mail directly to EPA at:

opp-docket@epa.gov.

E-mailed objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

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

III. Regulatory Assessment Requirements

A. Certain Acts and Executive Orders

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

In addition, since tolerances and exemptions that are established under section 408(l)(6) of FFDCA, such as the tolerance/exemption in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

B. Executive Order 12875

Under Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to OMB a description of the extent of EPA's prior consultation with representatives of affected State, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local, and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.''

Today's rule does not create an unfunded Federal mandate on State, local, or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

C. Executive Order 13084

Under Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal

governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

IV. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the Agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

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

Dated: March 11, 1999.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

Authority: 21 U.S.C. 321(q), 346a and 371.

§ 180.431 [Amended]

2. In § 180.431, by amending paragraph (b) by changing the expiration/revocation date ''1/31/00'' for the entry ''cranberries'' to read ''7/31/01''.

[FR Doc. 99–6895 Filed 3–23–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300808; FRL 6066–9]

RIN 2070–AB78

Imidacloprid; Extension of Tolerance for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation extends a time-limited tolerance for combined residues of the insecticide imidacloprid (1-[6-chloro-3-pyridinyl)methyl]-*N*-nitro-2-imidazolidinimine) and its metabolites containing the 6-chloropyridinyl moiety, all expressed as 1-[(6-chloro-3-pyridinyl)methyl]-*N*-nitro-2-imidazolidinimine in or on cucurbits (Crop Group 9 including cucumbers, melons and squash) at 0.2 part per million (ppm) for an additional 1–year period. This tolerance will expire and is revoked on March 31, 2000. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of the pesticide on cucurbits. Section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under FIFRA section 18.

DATES: This regulation becomes effective March 24, 1999. Objections and requests for hearings must be received by EPA, on or before May 24, 1999.

ADDRESSES: Written objections and hearing requests, identified by the docket control number [OPP–300808], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled ''Tolerance Petition Fees'' and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300808], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epa.gov. Copies of electronic objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All copies of electronic objections and hearing requests must be identified by the docket control number [OPP–300808]. No Confidential Business Information (CBI) should be submitted through e-mail. Copies of electronic objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Barbara Madden, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location , telephone number, and e-mail address: Rm. 284, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305–6463, madden.barbara@epa.gov.

SUPPLEMENTARY INFORMATION: EPA issued a final rule, published in the **Federal Register** of March 19, 1997 (62 FR 53) (FRL 5594–2), which announced that on its own initiative under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a and (l)(6), as amended by the Food Quality Protection Act of 1996 (FQPA) (Pub. L. 104–170) it established a time-limited tolerance for the combined residues of imidacloprid and its metabolites in or on cucurbits at 0.2 ppm, with an expiration date of March 31, 1998. EPA established the tolerance because section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under FIFRA section 18. Such tolerances can be established without

providing notice or period for public comment.

EPA received a request to extend the use of imidacloprid on cucurbits for this year growing season due to the sweet potato, or silverleaf whitefly (SLW) infestation which has caused serious damage to the Hawaii cucurbit crop (watermelon, cucumbers, zucchini etc.) over the past several years. After having reviewed the submission, EPA concurs that emergency conditions exist. EPA has authorized under FIFRA section 18 the use of imidacloprid on cucurbits for control of silverleaf whitefly in cucurbits.

EPA assessed the potential risks presented by residues of imidacloprid in or on cucurbits. In doing so, EPA considered the safety standard in FFDCA section 408(b)(2), and decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the safety standard and with FIFRA section 18. The data and other relevant material have been evaluated and discussed in the final rule of March 19 , 1997 (62 FR 53) (FRL 5594–2). Based on that data and information considered, the Agency reaffirms that extension of the time-limited tolerance will continue to meet the requirements of section 408(l)(6). Therefore, the time-limited tolerance is extended for an additional 1–year period. EPA will publish a document in the **Federal Register** to remove the revoked tolerance from the Code of Federal Regulations (CFR). Although this tolerance will expire and is revoked on March 31, 2000, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on cucurbits after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA and the application occurred prior to the revocation of the tolerance. EPA will take action to revoke this tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

I. Objections and Hearing Requests

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

Any person may, by May 24, 1999, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given under the ''ADDRESSES'' section (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). EPA is authorized to waive any fee requirement ''when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection.'' For additional information regarding tolerance objection fee waivers, contact James Tompkins, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 239, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305–5697; tompkins.jim@epa.gov. Requests for waiver of tolerance objection fees should be sent to James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

II. Public Record and Electronic Submissions

EPA has established a record for this regulation under docket control number [OPP–300808] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 119 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Objections and hearing requests may be sent by e-mail directly to EPA at: opp-docket@epa.gov.

E-mailed objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

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

III. Regulatory Assessment Requirements

A. Certain Acts and Executive Orders

This final rule establishes a tolerance under section 408 of the FFDCA. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.* , or impose any enforceable duty or contain any unfunded mandate as described under

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Nor does it require any prior consultation as specficed by Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997).

In addition, since tolerances and exemptions that are established under section 408(l)(6) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq* .) do not apply. Nevertheless, the Agency previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

B. Executive Order 12875

Under Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to OMB a description of the extent of EPA's prior consultation with representatives of affected State, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local, and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.''

Today's rule does not create an unfunded Federal mandate on State, local, or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

C. Executive Order 13084

Under Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

IV. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.* , as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the Agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

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

Dated: March 11, 1999.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

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

§180.472 [Amended]

2. In §180.472, by amending the table in paragraph (b) for the following commodity ''Vegetables, cucurbits'' by changing the date ''3/31/99'' to read ''3/31/00.''

[FR Doc. 99–6894 Filed 3–23–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300805; FRL–6066–4]

RIN 2070–AB78

Azoxystrobin; Pesticide Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a time-limited tolerance for combined residues of azoxystrobin in or on lettuce and spinach. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of the pesticide on lettuce grown in California. This regulation establishes a maximum permissible level for residues of azoxystrobin in this food commodity pursuant to section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996. The tolerance will expire and is revoked on September 30, 2000.

DATES: This regulation is effective March 24, 1999. Objections and requests for hearings must be received by EPA on or before May 24, 1999.

ADDRESSES: Written objections and hearing requests, identified by the docket control number [OPP–300805], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled ''Tolerance Petition Fees'' and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number [OPP–300805], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epa.gov. Copies of electronic objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All copies of electronic objections and hearing requests must be identified by the docket control number [OPP–300805]. No Confidential Business Information (CBI) should be submitted through e-mail. Copies of electronic objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Jacqueline E. Gwaltney, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 278, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305–6792, e-mail: gwaltney.jackie@epa.gov.

SUPPLEMENTARY INFORMATION: EPA, on its own initiative, pursuant to sections 408 and (l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a and (l)(6), is establishing a tolerance for combined residues of the fungicide, in or on lettuce, leaf at 20.0 part per million (ppm); lettuce, head at 6.0 ppm and spinach at 25 ppm. These tolerances will expire and be revoked on September 30, 2000. EPA will publish a document in the **Federal Register** to remove the revoked tolerance from the Code of Federal Regulations.

I. Background and Statutory Findings

The Food Quality Protection Act of 1996 (FQPA) (Pub. L. 104–170) was signed into law August 3, 1996. FQPA amends both the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 301 *et seq*., and the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 *et seq*. The FQPA amendments went into effect immediately. Among other things, FQPA amends FFDCA to bring all EPA pesticide tolerance-setting activities under a new section 408 with a new safety standard and new procedures. These activities are described in this preeamble and discussed in greater detail in the final rule establishing the time-limited tolerance associated with the emergency exemption for use of propiconazole on sorghum (61 FR 58135, November 13, 1996) (FRL–5572–9).

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

Section 18 of FIFRA authorizes EPA to exempt any Federal or State agency from any provision of FIFRA, if EPA determines that ''emergency conditions exist which require such exemption.'' This provision was not amended by FQPA. EPA has established regulations governing such emergency exemptions in 40 CFR part 166.

Section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment.

Because decisions on section 18-related tolerances must proceed before EPA reaches closure on several policy issues relating to interpretation and implementation of the FQPA, EPA does not intend for its actions on such tolerances to set binding precedents for the application of section 408 and the new safety standard to other tolerances and exemptions.

II. Emergency Exemption for Azoxystrobin on Lettuce and FFDCA Tolerances

The California Department of Pesticide Regulation requested on December 30, 1998 a specific exemption for the use of azoxystrobin on lettuce to control anthracnose. This is the first year this use has been requested under section 18 of FIFRA. Anthracnose became a serious economic problem during the late winter-spring 1998, the lettuce growing season in California. This disease has not been reported in previous years, and it has never reached the infestation levels experienced in 1998. Under moderate to severe infestation conditions, anthracnose will cause reduction in yield and crop quality, with resultant economic losses to growers. The growers in the Salinas Valley estimate losses ranging from 20–60%, to a complete loss in some fields. EPA has authorized under FIFRA section 18 the use of azoxystrobin on lettuce for control of Anthracnose in California. After having reviewed the submission, EPA concurs that emergency conditions exist for this state.

The Maryland Department of Agriculture requested on February 19, 1999 a specific exemption for the use of azoxystrobin on spinach to control white rust. This is the first year this use has been requested under section 18 of FIFRA. White rust is one of the most serious constraints to increased spinach production, and disease control represents a large production investment in the mid-atlantic. The most severe disease of spinach whithin the region is white rust caused by *Albugo occidentalis*. When this disease is not controlled, losses in yield can be severe. White rust can cause dramatic quality reductions to the crop and can render a processing spinach crop unmarketable. EPA has authorized under FIFRA section 18 the use of azoxystrobin on spinach for control of white rust in Maryland. After having reviewed the submission, EPA concurs

that emergency conditions exist for this state.

As part of its assessment of this emergency exemption, EPA assessed the potential risks presented by residues of azoxystrobin in or on lettuce. In doing so, EPA considered the safety standard in FFDCA section 408(b)(2), and EPA decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the safety standard and with FIFRA section 18. Consistent with the need to move quickly on the emergency exemption in order to address an urgent non-routine situation and to ensure that the resulting food is safe and lawful, EPA is issuing this tolerance without notice and opportunity for public comment under section 408(e), as provided in section 408(l)(6). Although this tolerance will expire and is revoked on September 30, 2000, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on lettuce after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA, and the residues do not exceed a level that was authorized by this tolerance at the time of that application. EPA will take action to revoke this tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

Because this tolerance is being approved under emergency conditions EPA has not made any decisions about whether azoxystrobin meets EPA's registration requirements for use on lettuce or whether a permanent tolerance for this use would be appropriate. Under these circumstances, EPA does not believe that this tolerance serves as a basis for registration of azoxystrobin by a State for special local needs under FIFRA section 24(c). Nor does this tolerance serve as the basis for any State other than California to use this pesticide on this crop under section 18 of FIFRA without following all provisions of EPA's regulations implementing section 18 as identified in 40 CFR part 166. For additional information regarding the emergency exemption for azoxystrobin, contact the Agency's Registration Division at the address provided under the ''ADDRESSES'' section.

III. Aggregate Risk Assessment and Determination of Safety

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7) .

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of azoxystrobin and to make a determination on aggregate exposure, consistent with section 408(b)(2), for a time-limited tolerance for combined residues of azoxystrobin on lettuce, leaf at 20.0 ppm; lettuce, head at 6.0 ppm and spinach at 25.0 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

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

B. Toxicological Endpoint

1. *Acute toxicity*. The Agency did not identify an acute dietary endpoint and has determined that this risk assessment is not required.

2. *Short- and intermediate-term toxicity.* No toxic endpoints for these durations of exposure were identified in the toxicological data base.

3. *Chronic toxicity*. EPA has established the Reference Dose (RfD) for azoxystrobin at 0.18 milligrams/kilogram/day (mg/kg/day). The RfD, based on a chronic toxicity study in rats with a no observed adverse effect level of 18.2 mg/kg/day, was established at 0.18 mg/kg/day. Reduced body weights and bile duct lesions were observed at the lowest obseved adverse effect level of 34 mg/kg/day. An Uncertainty Factor (UF) of 100 was used to account for both the interspecies extrapolation and the intraspecies variability.

4. *Carcinogenicity*. Azoxystrobin has been classified by the Agency's RfD Committee as ''Not Likely'' to be carcinogenic to humans via relevant routes of exposure. This decision was made according to the 1996 proposed guidelines. Therefore, cancer risk was not assessed.

C. Exposures and Risks

In examining aggregate exposure, FQPA directs EPA to consider available information concerning exposures to the pesticide residue in food and all other non-occupational exposures. The primary non-food sources of exposure the Agency looks at include drinking water (whether from groundwater or surface water), and exposure through pesticide use in gardens, lawns, or buildings (residential and other indoor and/or outdoor uses). In evaluating food exposures, EPA takes into account varying consumption patterns of major identifiable subgroups of consumers, including infants and children.

1. *From food and feed uses.* Tolerances have been established (40 CFR 180.507) for the combined residues of azoxystrobin, in or on a variety of raw agricultural commodities. Permanent tolerances have been established (40 CFR 180.507(a)) for the combined residues of azoxystrobin and its Z isomer in or on a variety of raw agricultural commodities at levels ranging from 0.01 ppm in peanuts and pecans to 1.0 ppm in grapes. In addition, time-limited tolerances have been established (40 CFR 180.507(b)) at levels ranging from 0.006 ppm in milk to 20 ppm in rice hulls in conjunction with previous Section 18 requests. Risk assessments were conducted by EPA to assess dietary exposures and risks from azoxystrobin as follows:

i. *Acute exposure and risk*. No toxicological effects which could be attributed to a single dietary exposure were observed, including developmental and neurotoxic effects in the appropriate studies. Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1–day or single exposure.

ii. *Chronic exposure and risk—(Chronic RfD = 0.18 mg/kg/day).* In conducting this chronic dietary risk assessment, EPA has made very conservative assumptions: 100% of lettuce commodities and all other commodities having azoxystrobin tolerances will contain azoxystrobin residues and those residues will be at the level of the tolerance. Default concentration factors have been removed (i.e., set to 1) for the following commodities: grapes-juice, grapes-raisins, tomatoes-juice, tomatoes-puree, and potatoes-white (dry). Concentration factors were removed because data which were previously submitted show no concentration of residues into raisins, grape juice, tomato juice and puree or potatoes. The Novigen DEEM

(Dietary Exposure Evaluation Model) system was used for this chronic dietary exposure analysis. The analysis evaluates individual food consumption as reported by respondents in the USDA Continuing Surveys of Food Intake by Individuals conducted in 1989 through 1991. The model accumulates exposure to the chemical for each commodity and expresses risk as a function of dietary exposure. The existing azoxystrobin tolerances (published, pending, and including the necessary Section 18 tolerance(s)) result in a theoretical maximum residue contribution (TMRC) that is equivalent to the following percentages of the Chronic RfD:

Population Subgroup	Exposure (mg/kg/day)	Percent Reference Dose [1] (%Chronic RfD)
U.S. Population (48 States)	0.0052	2.9
All Infants (<1 year old)	0.012	6.7
Nursing Infants (<1 year old)	0.0036	2.0
Non-Nursing Infants (<1 year old)	0.016	8.6
Children (1–6 years old)	0.010	5.6
Children (7–12 years old)	0.0068	3.8
U.S. Population (Spring season)	0.0060	3.3
U.S. Population (Summer season)	0.0056	3.1
Northeast Region	0.0058	3.2
Western Region	0.0055	3.0
Pacific Region	0.0057	3.2
Hispanics	0.0060	3.3
Non-hispanic (other than black or white)	0.0086	4.8
Females (13+/nursing)	0.0064	3.6

[1]Percentage reference dose (% Chronic RfD) = Exposure/Chronic RfD x 100%

The subgroups listed above are: (1) the U.S. population (48 states); (2) those for infants and children; and, (3) the other subgroups for which the percentage of the Chronic RfD occupied is greater than that occupied by the subgroup U.S. Population (48 states).

2. *From drinking water.* Azoxystrobin is persistent and mobile. There is no established Maximum Contaminant Level for residues of azoxystrobin in drinking water. No health advisory levels for azoxystrobin in drinking water have been established (EPA Safe Drinking Water Hotline, 1(800)426–4791, January 27, 1999). EPA has estimates for the concentration of azoxystrobin in surface water based on GENEEC (Generic Estimated Environmental Concentration) modeling.

Chronic exposure and risk. Estimated environmental concentrations (EECs) using GENEEC for azoxystrobin on bananas, grapes, peaches, peanuts, pecans, tomatoes, and wheat are listed in the SWAT Team Second Interim Report (June 20, 1997).

The highest EEC for azoxystrobin in surface water (39 µg/L) is from the application of azoxystrobin to grapes. The EEC for ground water is 0.064 µg/L resulting from use on turf. For purposes of risk assessment, the maximum EEC for azoxystrobin in drinking water (39 µg/L) should be used for comparison to the back-calculated human health drinking water levels of comparison (DWLOC) for the chronic (non-cancer) endpoint. These DWLOCs for various population categories are summarized in the following table.

DRINKING WATER LEVELS OF COMPARISON FOR CHRONIC EXPOSURE [1]

Population Category [2]	Chronic RfD (mg/kg/day)	Food Exposure (mg/kg/day)	Maximum Water Exposure [3] (mg/kg/day)	DWLOC [4,5,6] (µg/L)
U.S. Population (48 states)	0.18	0.0052	0.17	6,100
Females (13+ years, nursing)	0.18	0.0064	0.17	5,200
Non-nursing Infants (<1 year old)	0.18	0.016	0.16	1,600

[1] Values are expressed to 2 significant figures.
[2] Within each of these categories, the subgroup with the highest food exposure was selected.
[3] Maximum Water Exposure (Chronic) (mg/kg/day) = Chronic RfD (mg/kg/day) - Food Exposure (mg/kg/day).
[4] DWLOC(µg/L) = Max. water exposure (mg/kg/day) x body wt (kg) ÷ [(10^{-3} mg/µg) * water consumed daily (L/day)].
[5] HED Default body weights are: General U.S. Population, 70 kg; Males (13+ years old), 70 kg; Females (13+ years old), 60 kg; Other Adult Populations, 70 kg; and, All Infants/Children, 10 kg.
[6] HED Default daily drinking rates are 2 L/day for adults and 1 L/day for children.

The estimated maximum concentrations of azoxystrobin in surface water and ground water are less than EPA's levels of comparison for azoxystrobin in drinking water as a contribution to chronic aggregate exposure. Therefore, taking into account the present uses and uses proposed in this Section 18 and the fact that GENEEC can substantially overestimate (by up to 3x) true pesticide concentrations in drinking water, EPA concludes with reasonable certainty that residues of azoxystrobin in drinking water (when considered along with other sources of chronic exposure for which EPA has reliable data) would not result in an unacceptable estimate of chronic (non-cancer) aggregate human health risk at this time.

EPA bases this determination on a comparison of estimated average concentrations of azoxystrobin in surface and ground water to back-calculated DWLOCs for azoxystrobin in drinking water. These levels of comparison in drinking water were determined after EPA considered all other non-occupational human exposures for which it has reliable data, including all current uses, and the use considered in this action. The estimate of azoxystrobin in surface water is derived from a water quality model that uses conservative assumptions (health-protective) regarding the pesticide transport from the point of application to surface and ground water. Because EPA considers the aggregate risk resulting from multiple exposure pathways associated with a pesticide's uses, levels of comparison in drinking water may vary as those uses change. If new uses are added in the future, EPA will reassess the potential impacts of azoxystrobin in drinking water as a part

of the chronic (non-cancer) aggregate risk assessment process.

3. *From non-dietary exposure.* Azoxystrobin is currently registered for use on the following residential non-food sites: A search of References indicated that azoxystrobin (Heritage formulation) is registered for residential use on ornamental turf. Short-term exposure may occur for residential handlers and for postapplication activities. Because the TES Committee did not select applicable acute dietary or short-term dermal or inhalation endpoints, a short-term risk assessment is not required. No toxicity was observed at the limit dose (1,000 mg/kg body wt/day) in a 21–day dermal study and an acute inhalation study indicated low toxicity. Intermediate-term and chronic exposures are not expected for residential use.

4. *Cumulative exposure to substances with common mechanism of toxicity.* Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

EPA does not have, at this time, available data to determine whether azoxystrobin has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, azoxystrobin does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that azoxystrobin has a common mechanism of toxicity with other substances. For more information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the final rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

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

1. *Chronic risk.* Using the conservative Theoretical Maximum Residue Contribution exposure assumptions described above, and taking into account the completeness and reliability of the toxicity data, EPA has estimated the exposure to azoxystrobin from food will utilize 4.8% of the Chronic RfD for the most highly exposed adult population subgroup (Non-Hispanic (other than black or white)). The exposure to azoxystrobin from food for infants and children will utilize from 2.0% to 8.6% of the chronic RfD. EPA generally has no concern for exposures below 100% of the Chronic RfD (when the FQPA 10x safety factor is removed, as is the case with azoxystrobin) because the Chronic RfD represents the level at which daily aggregate oral exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to azoxystrobin in drinking water, EPA does not expect the aggregate exposure to exceed 100% of the Chronic RfD. Chronic exposures are not expected for residential uses. EPA concludes that there is a reasonable certainty that no harm will result to adults, infants, or children from chronic aggregate exposure to azoxystrobin residues.

2. *Short- and intermediate-term risk.* There are no applicable endpoints for short-term exposure, therefore, a short-term aggregate risk assessment is not required. Intermediate-term exposure is not expected for registered residential uses, therefore, an intermediate-term risk assessment is not required.

3. *Aggregate cancer risk for U.S. population.* The EPA RfD/Peer Review Committee (November 7, 1996) determined that azoxystrobin should be classified as ''Not Likely'' to be a human carcinogen according to the proposed revised Cancer Guidelines. Therefore, a cancer risk assessment is not required.

4. *Endocrine disrupter effects.* EPA is required to develop a screening program to determine whether certain substances (including all pesticides and inerts) ''may have an effect in humans that is similar to an effect produced by a naturally occurring estrogen, or such other endocrine effect....'' The Agency is currently working with interested stakeholders, including other government agencies, public interest groups, industry, and research scientists in developing a screening and testing program and a priority setting scheme to implement this program. Congress has allowed 3 years from the passage of FQPA (August 3, 1999) to implement this program. At that time, EPA may require further testing of this active ingredient and end use products for endocrine disrupter effects.

5. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to azoxystrobin residues.

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

1. *Safety factor for infants and children*—i. *In general.* In assessing the potential for additional sensitivity of infants and children to residues of azoxystrobin, EPA considered data from developmental toxicity studies in the rat and rabbit and a 2–generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from maternal pesticide exposure during gestation. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

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

ii. *Conclusion.* There is a complete toxicity data base for azoxystrobin and exposure data is complete or is estimated based on data that reasonably accounts for potential exposures.

2. *Acute risk.* This is not applicable since no toxicological endpoints of concern were identified during review of the data.

3. *Chronic risk.* Using the exposure assumptions described in this unit, EPA has concluded that aggregate exposure to azoxystrobin from food will utilize 2–8.6% of the RfD for infants and children. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to azoxystrobin in drinking water and from non-dietary, non-occupational exposure, EPA does not expect the aggregate exposure to exceed 100% of the RfD.

4. *Determination of safety.* Based on these risk assessments, EPA concludes

that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to azoxystrobin residues.

IV. Other Considerations

A. Metabolism In Plants and Animals

1. *Plants.* The nature of the residue in plants is adequately understood. The HED Metabolism Assessment Review Committee (MARC) met on November 10, 1998 and determined that the residue of concern in plants is azoxystrobin and its Z isomer, R230310. The committee based this determination on the results of metabolism studies done on grapes, peanuts, and wheat. In all three studies the major residues were azoxystrobin and R230310. RAB2 will translate these data to lettuce for this Section 18.

2. *Animals.* As there are no animal feed items associated with lettuce, the nature of the residue in animal commodities is not of concern for this Section 18.

B. Analytical Enforcement Methodology

Adequate methodology (RAM 243, GC/NPD, MRID No. 445951–05) is available for enforcement of the proposed tolerance in/on lettuce. This method will be submitted to FDA for inclusion in PAM. The method may be requested from: Calvin Furlow, PRRIB, IRSD (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm 101FF, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305–5229.

C. Magnitude of Residues

Zeneca Ag Products has submitted field trial data for a variety of crops. The data from cherries were translated to lettuce for the purposes of this Section 18 only. The data were submitted in conjunction with a request for the establishment of a permanent tolerance on the stone fruit crop group. In choosing a crop to translate data from, the following criteria were considered: azoxystrobin application rate, PHI, and plant morphology. Several crops had similar application rates, but cherries had the most similar PHI.

D. International Residue Limits

There are no CODEX, Canadian, or Mexican maximum residue limits for azoxystrobin on lettuce commodities. Thus, harmonization is not an issue for this Section 18 request.

E. Rotational Crop Restrictions

Rotational crop data were previously submitted. Based on this information, a 45–day plantback interval is appropriate for all crops other than those with azoxystrobin tolerances.

V. Conclusion

Therefore, the tolerance is established for combined residues of azoxystrobin in lettuce, leaf at 20.0 ppm; lettuce, head at 6.0 ppm; and spinach at 25.0 ppm.

VI. Objections and Hearing Requests

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

Any person may, by May 24, 1999, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given under the ''ADDRESSES'' section (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). EPA is authorized to waive any fee requirement ''when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection.'' For additional information regarding tolerance objection fee waivers, contact James Tompkins, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 239, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305–5697, tompkins.jim@epa.gov. Requests for waiver of tolerance objection fees should be sent to James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

VII. Public Record and Electronic Submissions

EPA has established a record for this regulation under docket control number [OPP–300805] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 119 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Objections and hearing requests may be sent by e-mail directly to EPA at: opp-docket@epa.gov.

E-mailed objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this regulation, as well as the public version, as described in this unit will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are

received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the Virginia address in ''ADDRESSES'' at the beginning of this document.

VIII. Regulatory Assessment Requirements

A. Certain Acts and Executive Orders

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

In addition, since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(l)(6), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

B. Executive Order 12875

Under Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to OMB a description of the extent of EPA's prior consultation with representatives of affected State, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local, and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.''

Today's rule does not create an unfunded Federal mandate on State, local, or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

C. Executive Order 13084

Under Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

IX. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the Agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

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

Dated: March 16, 1999.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

Authority: 21 U.S.C. 321(q), 346a and 371.

2. In § 180.507, paragraph (b), by adding an entry for ''lettuce, leaf'', ''lettuce, head'', and ''spinach'', to the table to read as follows:

§ 180.507 Azoxystrobin; tolerance for residues.

* * * * *

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

Commodity	Parts per million	Expiration/ Revocation date
* * *	*	*
Lettuce, head	6.0	9/30/00
Lettuce, leaf	20.0	9/30/00
* * *	*	*
Spinach	25.0	9/30/00

Commodity	Parts per million	Expiration/ Revocation date
* * *	*	*

[FR Doc. 99–7175 Filed 3–23–99; 8:45 am]

BILLING CODE 6560–50–F

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

45 CFR Parts 1207 and 2551

RIN 3045–AA17

Senior Companion Program

ACTION: Final regulations.

SUMMARY: The Corporation for National and Community Service (hereinafter the ''Corporation''), amends the regulations governing the administration of the Senior Companion Program (SCP). This final rule implements changes to the Domestic Volunteer Service Act of 1973, as amended, and establishes minimum program requirements with greater clarity. It updates program operations, consolidates requirements from outdated sources into one user friendly document; and incorporates new concepts of programming to highlight the accomplishments and impact of senior service. This amendment supersedes the old ACTION Senior Companion Program regulations and provisions of the SCP Operations Handbook.

DATES: These regulations take effect April 23, 1999.

FOR FURTHER INFORMATION CONTACT: Rey Tejada at 202–606–5000 ext. 197.

SUPPLEMENTARY INFORMATION: The Corporation published a notice of proposed rulemaking (NPRM) for the Senior Companion Program 45 CFR Parts 1207 and 2551 in the **Federal Register** at 63 FR 46954, September 3, 1998.

Summary of Main Comments and Changes

In response to the Corporation's invitation in the NPRM, the Corporation received 223 letters. A significant number (80 percent) of the letters came from one state. A summary of the main comments received and the Corporation's responses are provided in this final rule. Comments that are general or editorial in nature, or those requesting clarification of program requirements are not addressed in this final rule. The significant comments and the Corporation's responses are summarized by section as follows:

Section 2551.11 What is the Senior Companion Program?

Comments: Expressed concern that the language proposed for § 2551.11 puts too much emphasis on service, less on the volunteers, and disregards the dual purpose of the program.

Response: The Corporation understands the concerns expressed and has modified the section to emphasize the dual purpose of the program. The first sentence of § 2551.11 was revised by adding ''for the dual purpose of engaging'' after ''organizations'', and ''and to provide a high quality experience that will enrich the lives of the volunteers'' after ''needs.''

Section 2551.12(d) Annual Income

Comments: Expressed some confusion as to whether it is mandatory to count the value of food and shelter given the use of the word ''may'' in this section, and the word ''should'' in the second sentence of § 2551.42(b).

Response: In determining income eligibility, it is the Corporation's intent to count the value of food and shelter provided at no cost to a volunteer. This is to ensure that volunteer applicants receiving such assistance do not have an undue advantage over those who do not. To make this point clear, the Corporation has amended the second sentence of this section by using the word ''shall'' instead of ''may'', and has also inserted the word ''in-kind'' after ''cash'' in the first sentence.

Section 2551.12(l) National Senior Service Corps

Comments: Object to the use of the name National Senior Service Corps (NSSC) because it is not the name used in the DVSA.

Response: This name has been in use for the last several years and the Corporation has used significant resources for the development and design of a number of promotional program materials that are now in wide use by projects across the country.

Section 2551.22 General Responsibilities of Sponsor

Comments: Suggested adding language that would prohibit a sponsor from delegating its responsibilities to its own subsidiary.

Response: The Corporation gives the sponsor primary responsibility for fulfilling all project management requirements. It would be inconsistent with its obligations under the grant, if the sponsor were to be prohibited from delegating part of its responsibilities to any subsidiary under its control.

Section 2551.23(f) Volunteer Orientation

Comments: Indicated that 40 hours of pre-service orientation is difficult for staff to deliver; others thought that the four hours of monthly in-service training is excessive.

Response: The Corporations understands the concerns expressed. To increase flexibility and training options, the Corporation amended the provision to provide 40 hours of orientation, of which 20 hours must be pre-service. The Corporation believes four hours of monthly in-service training is essential.

Section 2551.23(i) Strategic Plan

Comments: Expressed concern that to require the development of a strategic plan would be a significant paperwork burden on projects.

Response: The Corporation understands the concerns expressed regarding the requirement and the potential burden it may produce. For this reason, the provision has been withdrawn from the final rule.

Section 2551.23(k) Assessment of Accomplishments and Impact

Comments: Expressed concern about administrative demands the requirement for assessing impact would entail.

Response: The Corporation appreciates the concern expressed. However, the provision is essential for the Corporation to meet its obligations under The Government Performance and Results Act.

Section 2551.24 Securing Community Participation

Comments: The comments were mixed. Some oppose any changes in the structure, role and operation of the Advisory Council as they were specified in previous regulations. Others support the flexibility provided by the new rule.

Response: The new provision gives local program sponsors maximum flexibility for securing community participation. It gives them discretion to use an Advisory Council or another organizational structure to meet the requirement. The Corporation believes that the new rule gives local sponsors the ability to choose whatever method works best for them to involve the community in program operations.

Section 2551.25(b) Delegation of Authority

Comments: Expressed concern about the potential increase in workload for project directors to meet this

requirement. Some were also confused as to what the delegation of authority means.

Response: The Corporation has withdrawn the provision from the final rule.

Section 2551.25(d) Full-time Project Director

Comments: Comments were mixed. Some were in support of the new rule; others wanted a provision to waive the full-time project director requirement; and a few wanted the requirement taken out of federal regulations and left at the sponsor's discretion.

Response: The Corporation modified this section by deleting from the last sentence any reference to cost savings and leaving the basis for negotiating a part-time director position to the size, scope and quality of project operations. The new rule replaces the more rigid and cumbersome waiver process required under the old regulations to employ a part-time director.

Section 2551.41 Senior Companion Eligibility

Comments: Suggested lowering the age eligibility from 60 to 55 to attract more volunteers into to the program and broaden the potential volunteer pool.

Response: The age eligibility of volunteers is established by law. Only Congress can change this requirement and the Corporation plans to pursue that objective through the reauthorization process.

Section 2551.42 Income Guidelines

Comments: Many recommend increasing the income guideline to 150% of poverty. Others questioned the inclusion of the value of food and shelter provided at no cost to a volunteer in determining income.

Response: The income guideline is also established by law and can only be changed through a legislative amendment. Counting the value of food, clothing and shelter provided at no cost, encourages equitable participation by not giving advantage to volunteers who receive such assistance.

Section 2551.45(a) Stipend

Comments: Expressed concern that the rule excludes eligible married couples from receiving a stipend.

Response: The Corporation, after considering the concerns expressed, has decided to withdraw subsections (a)(1) and (a)(2) in order to allow all eligible married volunteers, to receive a stipend.

Section 2551.45(c) Transportation

Comments: Concern that use of the word ''may'' in this section takes away the guarantee that volunteers will receive the transportation assistance they need to get to their assignments.

Response: After considering the comments, the Corporation modified this section by deleting the word ''may'' and using ''shall'' instead after ''Senior Companions''.

Section 2551.45(d) Physical Examination

Comments: Requested that the physical examination be permitted during the first month of service rather than requiring that it be provided only prior to service. The rationale for this request is that such an approach could save money particularly in cases where volunteers terminate shortly after enrollment.

Response: The Corporation understands the rationale for the request. However, physical examinations provide some assurance that the volunteers can serve without detriment to themselves or their clients. The Corporation believes this justifies the costs involved.

Section 2551.45(e) Meals and Recognition

Comments: Expressed concern that this section reduces the value of support by limiting it to available resources, and suggested that recognition be made mandatory.

Response: To emphasize its importance to the volunteers, the Corporation revised this section by using the term ''shall be'' instead of ''are'' in the first line. The level of support volunteers receive is always governed by the resources available to a project under an approved grant.

Section 2551.51(a) (b) (c) Terms of Service

Comments: Comments were mixed. Some agree with the flexibility provided under the new rule; others thought there should be more flexibility suggesting that terms of service should be left to discretion of the sponsor.

Response: After considering the comments, the Corporation modified this section to allow even more flexibility in volunteers' term of service. Subsection (a) was revised to allow volunteers to serve a minimum of nine months a year at an average of 20 hours of service a week. Consistent with this amendment, subsections (b) and (c) were deleted.

Section 2551.52 Modified Schedule

Comments: All opposed the proposed rule. Many thought that the 10 year service requirement as a condition for a modified service schedule was excessive.

Response: The Corporation deleted this section in view of the changes made on Section 2551.51(a) on terms of service.

Section 2551.55 Volunteer Leave

Comments: Opposed this provision because it may result in less leave for volunteers. Many thought that volunteer leave should be governed by sponsor's policies.

Response: After considering the comments, the Corporation has withdrawn this provision from the final rule.

Section 2551.61 Sponsor As Volunteer Station

Comments: Reflected concern about the limit that no more than 20 percent of a sponsor's budgeted VSY's can be placed in programs administered by the sponsor.

Response: Language was added providing a waiver by the Corporation to increase the percentage of volunteers who may serve in programs administered by the sponsor.

Section 2551.62(c) Care Plans

Comments: Opposed the care plan provision saying that it would increase paperwork burden on stations and raise issues of client confidentiality.

Response: The Corporation modified the provision changing ''care plan'' to a ''written volunteer assignment plan'' that identifies the role and activities of the Senior Companion and expected outcomes for the client served.

Section 2551.72(a) Volunteer Assignments

Comments: Suggested that volunteers be permitted to handle client's finances because it is considered to be a vital service.

Response: The Corporation amended sub-section (a) by deleting ''handling a client's finances'' from the list of prohibited volunteer activities.

Section 2551.73 Care Plans

Comments: Stated they were unclear as to the meaning of the provision and that it raises issues of client confidentiality.

Response: The Corporation modified the provision changing ''care plan'' to a ''written volunteer assignment plan'' that identifies the role and activities of the Senior Companion and expected outcomes for the client served.

Section 2551.81 Type of Clients

Comments: Requested a more inclusive definition of eligible clients.

Response: The Corporation modified this section by adopting the more inclusive language of the old regulations on eligible clients.

Section 2551.92(c) Excess Non-Corporation Support

Comments: Recommended that the Corporation not restrict the manner in which contributions in excess of the required local support are spent. They also suggest deleting the condition that such expenditure be made consistent with the provision of the Act.

Response: The final rule does not restrict the manner in which the sponsors spend contributions made in excess of the local support required. The condition that such expenditures be made consistent with the provisions of the Act is a requirement of the law.

Section 2551.92(e) Cost Reimbursement Ratio

Comments: Comments were mixed. Some are opposed to the requirement and suggest that a waiver provision be included. Others are in favor of the new provision that reduces the required cost reimbursement ratio from 90 percent to 80 percent.

Response: The new provision lessens the burden on local sponsors by reducing the required ratio under the old regulation by 10 percent. It ensures that volunteer support items are adequately covered in the grant budget. The Corporation believes that allowing any further reduction through a waiver provision, would jeopardize the sponsor's ability to provide volunteer support.

Section 2551.93(d) Assignment Related Costs

Comments: Opposed the provision specifying that equipment or supplies for volunteer while on assignment are not allowable costs.

Response: The provision restates a requirement under the old regulations. Limited program funds can cover only essential direct volunteer support such as transportation to and from assignment. Other costs associated with the volunteer's service activity are the responsibility of the station or other third parties.

Section 2551.104 Funds for Non-Stipended Senior Companions

Comments: Questioned why federal funds cannot be used to pay any cost related to non-stipended volunteers when the Corporation encourages their recruitment and allows them to receive cost reimbursements other than the stipend.

Response: The rule on non-stipended volunteers is a restatement of the language in the program's authorizing legislation. The rule cannot be changed without a change in the law.

Section 2551.121(c) Compensation for Service

Comments: Requested clarifying language for subsection (3) which states that station support shall not be a precondition to the assignment of volunteers, and subsection (4) which states that the sponsor shall withdraw services if the station is unable to provide monetary and in-kind support.

Response: The Corporation modified both subsections by moving the last sentence in subsection (3) and inserted it as the first sentence in subsection (4). This adjustment clarifies the Corporation's position that a volunteer station's ability to provide cash or in-kind support is not a precondition to the assignment of volunteers to that station. However, if a station agrees to provide support under a Memorandum of Understanding, but later decides to withdraw that support in a manner that reduces or diminishes the ability of the project to fulfill its obligations under the grant, then the sponsor can withdraw volunteer services from that station.

Regulatory Flexibility Act and Unfunded Mandates Reform Act

The General Counsel, in accordance with the Regulatory Flexibility Act (5 U.S.C. 606(b)), has reviewed this regulation and by approving certifies that this final rule will not have a significant impact on small business entities.

Under the Unfunded Mandates Reform Act of 1995, the Corporation certifies that this final rule does not include any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year.

Paperwork Reduction Act of 1995

These final regulations have been examined under the Paperwork Reduction Act of 1995 and have been found to contain no information collection requirements.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372. The objective of the Executive Order is to foster an intergovernmental partnership and strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance. In accordance with the Order, this document is intended to provide early notification of the Corporation's specific plans and actions for this program.

Executive Order 12866

This regulation has been drafted and reviewed in accordance with Executive Order 12866. The Office of Management and Budget has reviewed this rule and has determined that this rule is not a ''significant regulatory action'' under Executive Order 12866, section 3(f), Regulatory Planning and Review.

DISTRIBUTION TABLE

Old 45 CFR Part 1207	New 45 CFR Part 2551
1207.1–1	2551.11
1207.1–2	2551.12
1207.1–3	2551.23
1207.2–1	None
1207.2–2	2551.92
1207.2–3	2551.21
1207.2–4	2551.91
1207.2–5	2551.91
1207.2–6	2551.91
1207.2–7	2551.93
1207.2–8	2551.31
1207.3–1	2551.23
1207.3–2	2551.25
1207.3–3	2551.24
1207.3–4	2551.62
1207.3–5	2551.41
1207.3–6	2551.71
1207.4–1	2251.41
1207.5–1	2251.121
1207.5–2	2551.122

List of Subjects

45 CFR Part 1207

Aged, Grant programs—social programs, Reporting and recordkeeping requirements, Volunteers.

45 CFR Part 2551

Aged, Grant programs—social programs, Volunteers.

For the reasons set out in the preamble, and under the authority of 42 U.S.C. 12501 *et seq.*, part 1207 in 45 CFR chapter XII is redesignated as part 2551 in 45 CFR chapter XXV and is revised to read as follows:

PART 2551—SENIOR COMPANION PROGRAM

Subpart A—General

Sec.

2551.11 What is the Senior Companion Program?
2551.12 Definitions.

Subpart B—Eligibility and Responsibilities of a Sponsor

2551.21 Who is eligible to serve as a sponsor?
2551.22 What are the responsibilities of a sponsor?
2551.23 What are a sponsor's program responsibilities?
2551.24 What are a sponsor's responsibilities for securing community participation?
2551.25 What are a sponsor's administrative responsibilities?
2551.26 May a sponsor administer more than one program grant from the Corporation?

Subpart C—Suspension and Termination of Corporation Assistance

2551.31 What are the rules on suspension, termination, and denial of refunding of grants?

Subpart D—Senior Companion Eligibility, Status, and Cost Reimbursements

2551.41 Who is eligible to be a Senior Companion?
2551.42 What income guidelines govern eligibility to serve as a stipended Senior Companion?
2551.43 What is considered income for determining volunteer eligibility?
2551.44 Is a Senior Companion a federal employee, an employee of the sponsor or of the volunteer station?
2551.45 What cost reimbursements are provided to Senior Companions?
2551.46 May the cost reimbursements of a Senior Companion be subject to any tax or charge, be treated as wages or compensation, or affect eligibility to receive assistance from other programs?

Subpart E—Senior Companion Terms of Service

2551.51 What are the terms of service of a Senior Companion?
2551.52 What factors are considered in determining a Senior Companion's service schedule?
2551.53 Under what circumstances may a Senior Companion's service be terminated?

Subpart F—Responsibilities of a Volunteer Station

2551.61 When may a sponsor serve as a volunteer station?
2551.62 What are the responsibilities of a volunteer station?

Subpart G—Senior Companion Placements and Assignments

2551.71 What requirements govern the assignment of Senior Companions?
2551.72 Is a written volunteer assignment plan required for each volunteer?

Subpart H—Clients Served

2551.81 What type of clients are eligible to be served?

Subpart I—Application and Fiscal Requirements

2551.91 What is the process for application and award of a grant?
2551.92 What are project funding requirements?
2551.93 What are grants management requirements?

Subpart J—Non-Stipended Senior Companions

2551.101 What rule governs the recruitment and enrollment of persons who do not meet the income eligibility guidelines to serve as Senior Companions without stipends?
2551.102 What are the conditions of service of non-stipended Senior Companions?
2551.103 Must a sponsor be required to enroll non-stipended Senior Companions?
2551.104 May Corporation funds be used for non-stipended Senior Companions?

Subpart K—Non-Corporation Funded SCP Projects

2551.111 Under what conditions can an agency or organization sponsor a Senior Companion project without Corporation funding?
2551.112 What benefits are a non-Corporation funded project entitled to?
2551.113 What financial obligation does the Corporation incur for non-Corporation funded projects?
2551.114 What happens if a non-Corporation funded sponsor does not comply with the Memorandum of Agreement?

Subpart L—Restrictions and Legal Representation

2551.121 What legal limitations apply to the operation of the Senior Companion Program and to the expenditure of grant funds?
2551.122 What legal coverage does the Corporation make available to Senior Companions ?

Authority: 42 U.S.C. 4950 *et seq.*

Subpart A—General

§ 2551.11 What is the Senior Companion Program?

The Senior Companion Program provides grants to qualified agencies and organizations for the dual purpose of: engaging persons 60 and older, particularly those with limited incomes, in volunteer service to meet critical community needs; and to provide a high quality experience that will enrich the lives of the volunteers. Program funds are used to support Senior Companions in providing supportive, individualized services to help adults with special needs maintain their dignity and independence.

§ 2551.12 Definitions.

(a) *Act.* The Domestic Volunteer Service Act of 1973, as amended, Pub. L. 93–113, Oct. 1, 1973, 87 Stat. 396, 42 U.S.C. 4950 *et seq.*

(b) *Adult with special needs.* Any individual over 21 years of age who has one or more physical, emotional, or mental health limitations and is in need of assistance to achieve and maintain their highest level of independent living.

(c) *Adequate staffing level.* The number of project staff or full-time equivalent needed by a sponsor to manage NSSC project operations considering such factors as: number of budgeted Volunteer Service Years (VSY), number of volunteer stations, and the size of the service area.

(d) *Annual income.* Total cash and in-kind receipts from all sources over the preceding 12 months including: the applicant or enrollee's income and, the applicant or enrollee's spouse's income, if the spouse lives in the same residence. The value of shelter, food, and clothing, shall be counted if provided at no cost by persons related to the applicant/enrollee, or spouse.

(e) *Chief Executive Officer.* The Chief Executive Officer of the Corporation appointed under the National and Community Service Act of 1990, as amended, (NCSA), 42 U.S.C. 12501 *et seq.*

(f) *Corporation.* The Corporation for National and Community Service established under the Trust Act. The Corporation is also sometimes referred to as CNCS.

(g) *Cost reimbursements.* Reimbursements provided to volunteers such as stipends to cover incidental costs, meals, and transportation, to enable them to serve without cost to themselves. Also included are the costs of annual physical examinations, volunteer insurance and recognition which are budgeted as Volunteer Expenses.

(h) *In-home.* The non-institutional assignment of a Senior Companion in a private residence.

(i) *Letter of Agreement.* A written agreement between a volunteer station, the sponsor and the adult served or the persons legally responsible for that adult. It authorizes the assignment of a Senior Companion in the clients home, defines the Senior Companion's activities and delineates specific arrangements for supervision.

(j) *Memorandum of Understanding.* A written statement prepared and signed by the Senior Companion project sponsor and the volunteer station that identifies project requirements, working

relationships and mutual responsibilities.

(k) *National Senior Service Corps (NSSC).* The collective name for the Foster Grandparent Program (FGP), the Retired and Senior Volunteer Program (RSVP), the Senior Companion Program (SCP), and Demonstration Programs established under Title II Parts A, B, C, and E, of the Act. NSSC is also referred to as the ''Senior Corps''.

(l) *Non-Corporation support (required).* The percentage share of non-Federal cash and in-kind contributions, required to be raised by the sponsor in support of the grant.

(m) *Non-Corporation support (excess).* The amount of non-Federal cash and in-kind contributions generated by a sponsor in excess of the required percentage.

(n) *Project.* The locally planned and implemented Senior Companion Program activity or set of activities as agreed upon between a sponsor and the Corporation.

(o) *Qualified individual with a disability.* An individual with a disability (as defined in the Rehabilitation Act, 29 U.S.C. 705 (20)) who, with or without reasonable accommodation, can perform the essential functions of a volunteer position that such individual holds or desires. If a sponsor has prepared a written description before advertising or interviewing applicants for the position, the written description may be considered evidence of the essential functions of the volunteer position.

(p) *Service area.* The geographically defined area in which Senior Companions are recruited, enrolled, and placed on assignments.

(q) *Service schedule.* A written delineation of the days and times a Senior Companion serves each week.

(r) *Sponsor.* A public agency or private non-profit organization that is responsible for the operation of a Senior Companion project.

(s) *Stipend.* A payment to Senior Companions to enable them to serve without cost to themselves. The amount of the stipend is determined by the Corporation and is payable in regular installments. The minimum amount of the stipend is set by law and shall be adjusted by the CEO from time to time.

(t) *Trust Act.* The National and Community Service Trust Act of 1993, Pub. L. 103–82, Sept. 21, 1993, 107 Stat. 785.

(u) *United States and States.* Each of the several States, the District of Columbia, the U.S. Virgin Islands, the Commonwealth of Puerto Rico, Guam and American Samoa, and Trust Territories of the Pacific Islands.

(v) *Volunteer assignment plan.* A written description of a Senior Companion's assignment with a client. The plan identifies specific outcomes for the client served and the activities of the Senior Companion.

(w) *Volunteer station.* A public agency, private non-profit organization or proprietary health care agency or organization that accepts the responsibility for assignment and supervision of Senior Companions in health, social service or related settings such as multi-purpose centers, home health care agencies or similar establishments. Each volunteer station must be licensed or otherwise certified, when required, by the appropriate state or local government. Private homes are not volunteer stations.

Subpart B—Eligibility and Responsibilities of a Sponsor

§ 2551.21 Who is eligible to serve as a sponsor?

The Corporation awards grants to public agencies, including Indian tribes and non-profit private organizations, in the United States that have the authority to accept and the capability to administer a Senior Companion project.

§ 2551.22 What are the responsibilities of a sponsor?

A sponsor is responsible for fulfilling all project management requirements necessary to accomplish the purposes of the Senior Companion Program as specified in the Act. A sponsor shall not delegate or contract these responsibilities to another entity. The sponsor shall comply with all program regulations and policies, and grant provisions prescribed by the Corporation.

§ 2551.23 What are a sponsor's program responsibilities?

A sponsor shall:

(a) Focus Senior Companion resources on critical problems affecting the frail elderly and other adults with special needs within the project's service area.

(b) Assess in collaboration with other community organizations or utilize existing assessment of the needs of the client population in the community and develop strategies to respond to those needs using the resources of Senior Companions.

(c) Develop and manage a system of volunteer stations by:

(1) Insuring that a volunteer station is a public or non-profit private organization, or an eligible proprietary health care agency, capable of serving as a volunteer station for the placement of Senior Companions;

(2) Ensuring that the placement of Senior Companions is governed by a Memorandum of Understanding:

(i) That is negotiated prior to placement;

(ii) That specifies the mutual responsibilities of the station and sponsor;

(iii) That is renegotiated at least every three years; and

(iv) That states the station assures it will not discriminate against Senior Companions or in the operation of its program on the basis of race, color, national origin, sex, age, political affiliation, religion, or on the basis of disability, if the participant or member is a qualified individual with a disability; and

(3) Reviewing volunteer placements regularly to ensure that clients are eligible to be served.

(d) Develop service opportunities that consider the skills and experiences of the Senior Companion.

(e) Consider the demographic make-up of the project service area in the enrollment of Senior Companions, taking special efforts to recruit eligible individuals from minority groups, persons with disabilities, and under-represented groups.

(f) Provide Senior Companions with assignments that show direct and demonstrable benefits to the adults and the community served, the Senior Companions, and the volunteer station; with required cost reimbursements specified in § 2551.45; with not less than 40 hours of orientation of which 20 hours must be pre-service, and an average of 4 hours of monthly in-service training.

(g) Encourage the most efficient and effective use of Senior Companions by coordinating project services and activities with related national, state and local programs, including other Corporation programs.

(h) Conduct an annual appraisal of volunteers' performance and annual review of their income eligibility.

(i) Develop, and annually update, a plan for promoting senior service within the project's service area.

(j) Annually assess the accomplishments and impact of the project on the identified needs and problems of the client population in the community.

(k) Establish written service policies for Senior Companions that include but are not limited to annual and sick leave, holidays, service schedules, termination, appeal procedures, meal and transportation reimbursements.

§ 2551.24 What are a sponsor's responsibilities for securing community participation?

(a) A sponsor shall secure community participation in local project operation by establishing an Advisory Council or a similar organizational structure with a membership that includes people:

(1) Knowledgeable of human and social needs of the community;

(2) Competent in the field of community service and volunteerism;

(3) Capable of helping the sponsor meet its administrative and program responsibilities including fund-raising, publicity and impact programming;

(4) With interest in and knowledge of the capability of older adults; and

(5) Of a diverse composition that reflects the demographics of the service area.

(b) The sponsor determines how such participation shall be secured, consistent with the provisions of paragraphs (a)(1) through (a)(5) of this section.

§ 2551.25 What are a sponsor's administrative responsibilities?

A sponsor shall:

(a) Assume full responsibility for securing maximum and continuing community financial and in-kind support to operate the project successfully.

(b) Provide levels of staffing and resources appropriate to accomplish the purposes of the project and carry out its project management responsibilities.

(c) Employ a full-time project director to accomplish program objectives and manage the functions and activities delegated to project staff for NSSC program(s) within its control. A full-time project director shall not serve concurrently in another capacity, paid or unpaid, during established working hours. The project director may participate in activities to coordinate program resources with those of related local agencies, boards or organizations. A sponsor may negotiate the employment of a part-time project director with the Corporation when it can be demonstrated that such an arrangement will not adversely affect the size, scope, and quality of project operations.

(d) Consider all project staff as sponsor employees subject to its personnel policies and procedures.

(e) Compensate project staff at a level that is comparable with other similar staff positions in the sponsor organization and/or project service area.

(f) Establish risk management policies and procedures covering project and Senior Companion activities. This includes provision of appropriate insurance coverage for Senior Companions, vehicles and other properties used in the project.

(g) Establish record keeping/reporting systems in compliance with Corporation requirements that ensure quality of program and fiscal operations, facilitate timely and accurate submission of required reports and cooperate with Corporation evaluation and data collection efforts.

(h) Comply with and ensure that all volunteer stations comply with all applicable civil rights laws and regulations, including providing reasonable accommodation to qualified individuals with disabilities.

§ 2551.26 May a sponsor administer more than one program grant from the Corporation?

A sponsor may administer more than one Corporation program.

Subpart C—Suspension and Termination of Corporation Assistance

§ 2551.31 What are the rules on suspension, termination, and denial of refunding of grants?

(a) The Chief Executive Officer or designee is authorized to suspend further payments or to terminate payments under any grant providing assistance under the Act whenever he/she determines there is a material failure to comply with applicable terms and conditions of the grant. The Chief Executive Officer shall prescribe procedures to insure that:

(1) Assistance under the Act shall not be suspended for failure to comply with applicable terms and conditions, except in emergency situations for thirty days;

(2) An application for refunding under the Act may not be denied unless the recipient has been given:

(i) Notice at least 75 days before the denial of such application of the possibility of such denial and the grounds for any such denial; and

(ii) Opportunity to show cause why such action should not be taken;

(3) In any case where an application for refunding is denied for failure to comply with the terms and conditions of the grant, the recipient shall be afforded and opportunity for an informal hearing before an impartial hearing officer, who has been agreed to by the recipient and the Corporation; and

(4) Assistance under the Act shall not be terminated for failure to comply with applicable terms and conditions unless the recipient has been afforded reasonable notice and opportunity for a full and fair hearing.

(b) In order to assure equal access to all recipients, such hearings or other meetings as may be necessary to fulfill the requirements of this section shall be held in locations convenient to the recipient agency.

(c) The procedures for suspension, termination, and denial of refunding, that apply to the Senior Companion Program are specified in 45 CFR Part 1206.

Subpart D—Senior Companion Eligibility, Status, and Cost Reimbursements

§ 2551.41 Who is eligible to be a Senior Companion?

(a) To be a Senior Companion, an individual must:

(1) Be 60 years of age or older;

(2) Be determined by a physical examination to be capable, with or without reasonable accommodation, of serving adults with special needs without detriment to either himself/herself or the adults served;

(3) Agree to abide by all requirements as set forth in this part; and

(4) In order to receive a stipend, have an income that is within the income eligibility guidelines specified in this subpart D.

(b) Eligibility to be a Senior Companion shall not be restricted on the basis of formal education, experience, race, religion, color, national origin, sex, age, handicap, or political affiliation.

§ 2551.42 What income guidelines govern eligibility to serve as a stipended Senior Companion?

(a) To be enrolled and receive a stipend, a Senior Companion cannot have an annual income from all sources, after deducting allowable medical expenses, which exceeds the program's income eligibility guideline for the state in which he or she resides. The income eligibility guideline for each state is the higher amount of either:

(1) 125 percent of the poverty line as set forth in 42 U.S.C. 9902 (2); or

(2) 135 percent of the poverty line, in those primary metropolitan statistical areas (PMSA), metropolitan statistical areas (MSA) and non-metropolitan counties identified by the Corporation as being higher in cost of living, as determined by application of the Volunteers in Service to America (VISTA) subsistence rates. In Alaska the guideline may be waived by the Corporation State Director if a project demonstrates that low-income individuals in that location are participating in the project.

(b) Annual income is counted for the past 12 months and includes the applicant or enrollee's income and that of his/her spouse, if the spouse lives in

the same residence. Sponsors shall count the value of shelter, food, and clothing, if provided at no cost by persons related to the applicant, enrollee, or spouse.

(c) Allowable medical expenses are annual out-of-pocket medical expenses for health insurance premiums, health care services, and medications provided to the applicant, enrollee, or spouse which were not and will not be paid by Medicare, Medicaid, other insurance, or other third party payor, and which do not exceed 15 percent of the applicable income guideline.

(d) Applicants whose income is not more than 100 percent of the poverty line shall be given special consideration for enrollment.

(e) Once enrolled, a Senior Companion shall remain eligible to serve and to receive a stipend so long as his or her income, does not exceed the applicable income eligibility guideline by 20 percent.

§ 2551.43 What is considered income for determining volunteer eligibility?

(a) For determining eligibility, ''income'' refers to total cash or in-kind receipts before taxes from all sources including:

(1) Money, wages, and salaries before any deduction, but not including food or rent in lieu of wages;

(2) Receipts from self-employment or from a farm or business after deductions for business or farm expenses;

(3) Regular payments for public assistance, Social Security, Unemployment or Workers Compensation, strike benefits, training stipends, alimony, child support, and military family allotments, or other regular support from an absent family member or someone not living in the household;

(4) Government employee pensions, private pensions, and regular insurance or annuity payments; and

(5) Income from dividends, interest, net rents, royalties, or income from estates and trusts.

(b) For eligibility purposes, income does not refer to the following money receipts:

(1) Any assets drawn down as withdrawals from a bank, sale of property, house or car, tax refunds, gifts, one-time insurance payments or compensation from injury;

(2) Non-cash income, such as the bonus value of food and fuel produced and consumed on farms and the imputed value of rent from owner-occupied farm or non-farm housing.

§ 2551.44 Is a Senior Companion a federal employee, an employee of the sponsor or of the volunteer station?

Senior Companions are volunteers, and are not employees of the sponsor, the volunteer station, the Corporation, or the Federal Government.

§ 2551.45 What cost reimbursements are provided to Senior Companions?

Cost reimbursements include:

(a) *Stipend.* Senior Companions who are income eligible will receive a stipend in an amount determined by the Corporation and payable in regular installments, to enable them to serve without cost to themselves. The stipend is paid for the time Senior Companions spend with their assigned clients, for earned leave, and for attendance at official project events.

(b) *Insurance.* A Senior Companion is provided with the Corporation-specified minimum levels of insurance as follows:

(1) *Accident insurance.* Accident insurance covers Senior Companions for personal injury during travel between their homes and places of assignment, during their volunteer service, during meal periods while serving as a volunteer, and while attending project-sponsored activities. Protection shall be provided against claims in excess of any benefits or services for medical care or treatment available to the volunteer from other sources.

(2) *Personal liability insurance.* Protection is provided against claims in excess of protection provided by other insurance. It does not include professional liability coverage.

(3) *Excess automobile liability insurance.* (i) For Senior Companions who drive in connection with their service, protection is provided against claims in excess of the greater of either:

(A) Liability insurance volunteers carry on their own automobiles; or

(B) The limits of applicable state financial responsibility law, or in its absence, levels of protection to be determined by the Corporation for each person, each accident, and for property damage.

(ii) Senior Companions who drive their personal vehicles to or on assignments or project-related activities must maintain personal automobile liability insurance equal to or exceeding the levels established by the Corporation.

(c) *Transportation.* Senior Companions shall receive assistance with the cost of transportation to and from volunteer assignments and official project activities, including orientation, training, and recognition events.

(d) *Physical examination.* Senior Companions are provided a physical examination prior to assignment and annually thereafter to ensure that they will be able to provide supportive service without injury to themselves or the clients served.

(e) *Meals and recognition.* Senior Companions shall be provided the following within limits of the project's available resources:

(1) Assistance with the cost of meals taken while on assignment; and

(2) Recognition for their service.

§ 2551.46 May the cost reimbursements of a Senior Companion be subject to any tax or charge, be treated as wages or compensation, or affect eligibility to receive assistance from other programs?

No. Senior Companion's cost reimbursements are not subject to any tax or charge or treated as wages or compensation for the purposes of unemployment insurance, worker's compensation, temporary disability, retirement, public assistance, or similar benefit payments or minimum wage laws. Cost reimbursements are not subject to garnishment and do not reduce or eliminate the level of, or eligibility for, assistance or services a Senior Companion may be receiving under any governmental program.

Subpart E—Senior Companion Terms of Service

§ 2551.51 What are the terms of service of a Senior Companion?

A Senior Companion shall serve a minimum of nine months a year for an average of 20 hours of service a week. A Senior Companion shall not serve more than 1044 hours per year.

§ 2551.52 What factors are considered in determining a Senior Companion's service schedule?

(a) Travel time between the Senior Companion's home and place of assignment is not part of the service schedule and is not stipended.

(b) Travel time between individual assignments is a part of the service schedule and is stipended.

(c) Meal time may be part of the service schedule and is stipended only if it is specified in the goal statement as part of the service activity.

§ 2551.53 Under what circumstances may a Senior Companion's service be terminated?

(a) A sponsor may remove a Senior Companion from service for cause. Grounds for removal include but are not limited to: extensive and unauthorized absences; misconduct; inability to perform assignments; and failure to accept supervision. A Senior Companion may also be removed from

service for having income in excess of the eligibility level.

(b) The sponsor shall establish appropriate policies on service termination as well as procedures for appeal from such adverse action.

Subpart F—Responsibilities of a Volunteer Station

§ 2551.61 When may a sponsor serve as a volunteer station?

(a) A sponsor may function as a volunteer station if it is:

(1) A State organization administering a statewide Senior Companion project where the volunteer station is part of the State organization; or

(2) A Federal or State-recognized Indian tribal government.

(b) Other sponsors not included in the categories specified in paragraphs (a)(1) and (a)(2) of this section, can serve as a volunteer station provided that no more than 20 percent of its budgeted VSYs can be placed in programs administered by such sponsors. In special circumstances, the Corporation may grant a waiver to increase this percentage.

§ 2551.62 What are the responsibilities of a volunteer station?

A volunteer station shall undertake the following responsibilities in support of Senior Companion volunteers:

(a) Develop volunteer assignments that meet the requirements specified in §§ 2551.71 through 2551.72, and regularly assess those assignments for continued appropriateness.

(b) Select eligible clients for assigned volunteers.

(c) Develop a written volunteer assignment plan for each client that identifies the role and activities of the Senior Companion and expected outcomes for the client served.

(d) Obtain a Letter of Agreement for Senior Companions assigned in-home. This letter must comply with all Federal, State and local regulations.

(e) Provide Senior Companions serving the station with:

(1) Orientation to the station and any in-service training necessary to enhance performance of assignments;

(2) Resources required for performance of assignments including reasonable accommodation; and

(3) Appropriate recognition.

(f) Designate a staff member to oversee fulfillment of station responsibilities and supervision of Senior Companions while on assignment.

(g) Keep records and prepare reports required by the sponsor.

(h) Provide for the safety of Senior Companions assigned to it.

(i) Comply with all applicable civil rights laws and regulations including reasonable accommodation for Senior Companions with disabilities.

(j) Undertake such other responsibilities as may be necessary to the successful performance of Senior Companions in their assignments or as agreed to in the Memorandum of Understanding.

Subpart G—Senior Companion Placements and Assignments

§ 2551.71 What requirements govern the assignment of Senior Companions?

Senior Companion assignments shall:

(a) Provide for Senior Companions to give direct services to one or more eligible adults. Senior Companions cannot provide services such as those performed by medical personnel, services to large numbers of clients, custodial services, administrative support services or other services that would detract from the person-to-person relationship.

(b) Result in person-to-person supportive relationships with each client served.

(c) Support the achievement and maintenance of the highest level of independent living for their clients.

(d) Be meaningful to the Senior Companion.

(e) Be supported by appropriate orientation, training and supervision.

§ 2551.72 Is a written volunteer assignment plan required for each volunteer?

(a) All Senior Companions shall receive a written volunteer assignment plan developed by the volunteer station that:

(1) Is approved by the sponsor and accepted by the Senior Companion;

(2) Identifies the individual client to be served;

(3) Identifies the role and activities of the Senior Companion and expected outcomes for the client;

(4) Addresses the period of time each client should receive such services; and

(5) Is used to review the status of the Senior Companion's services in working with the assigned client, as well as the impact of the assignment on the client.

(b) If there is an existing plan that incorporates paragraphs (a)(2), (3), and (4) of this section, that plan shall meet the requirement.

Subpart H—Clients Served

§ 2551.81 What type of clients are eligible to be served?

Senior Companions serve only adults, primarily older adults, who have one or more physical, emotional, or mental health limitations and are in need of assistance to achieve and maintain their highest level of independent living.

Subpart I—Application and Fiscal Requirements

§ 2551.91 What is the process for application and award of a grant?

(a) *How and when may an eligible organization apply for a grant?*

(1) An eligible organization may file an application for a grant at any time.

(2) Before submitting an application an applicant shall determine the availability of funds from the Corporation.

(3) The Corporation may also solicit grant applicants. Applicants solicited under this provision are not assured of selection or approval and may have to compete with other solicited or unsolicited applications.

(b) *What must an eligible organization include in a grant application?*

(1) An applicant shall complete standard forms prescribed by the Corporation.

(2) The applicant shall comply with the provisions of Executive Order 12372, ''Intergovernmental Review of Federal Programs,'' (3 CFR, 1982 Comp., p. 197) in 45 CFR part 1233 and any other applicable requirements.

(c) *Who reviews the merits of an application and how is a grant awarded?*

(1) The Corporation reviews and determines the merit of an application by its responsiveness to published guidelines and to the overall purpose and objectives of the program. When funds are available, the Corporation awards a grant in writing to each applicant whose grant proposal provides the best potential for serving the purpose of the program. The award will be documented by Notice of Grant Award (NGA).

(2) The Corporation and the sponsoring organization are the parties to the NGA. The NGA will document the sponsor's commitment to fulfill specific programmatic objectives and financial obligations. It will document the extent of the Corporation's obligation to provide financial support to the sponsor.

(d) *What happens if the Corporation rejects an application?* The Corporation will return to the applicant an application that is not approved for funding, with an explanation of the Corporation's decision.

(e) *For what period of time does the Corporation award a Senior Companion grant?* The Corporation awards a Senior Companion grant for a specified period that is usually 12 months in duration.

§ 2551.92 What are project funding requirements?

(a) *Is non-Corporation support required?* A Corporation grant may be awarded to fund up to 90 percent of the cost of development and operation of a Senior Companion project. The sponsor is required to contribute at least 10 percent of the total project cost from non-Federal sources or authorized Federal sources.

(b) *Under what circumstances does the Corporation allow less than the 10 percent non-Corporation support?* The Corporation may allow exceptions to the 10 percent local support requirement in cases of demonstrated need such as:

(1) Initial difficulties in the development of local funding sources during the first three years of operations; or

(2) An economic downturn, the occurrence of a natural disaster, or similar events in the service area that severely restrict or reduce sources of local funding support; or

(3) The unexpected discontinuation of local support from one or more sources that a project has relied on for a period of years.

(c) *May the Corporation restrict how a sponsor uses locally generated contributions in excess of the 10 percent non-Corporation support required?* Whenever locally generated contributions to Senior Companion projects are in excess of the minimum 10 percent non-Corporation support required, the Corporation may not restrict the manner in which such contributions are expended provided such expenditures are consistent with the provisions of the Act.

(d) *Are program expenditures subject to audit?* All expenditures by the grantee of Federal and non-Federal funds, including expenditures from excess locally generated contributions in support of the grant are subject to audit by the Corporation, its Inspector General, or their authorized agents.

(e) *How are Senior Companion cost reimbursements budgeted?* The total of cost reimbursements for Senior Companions, including stipends, insurance, transportation, meals, physical examinations, and recognition, shall be a sum equal to at least 80 percent of the amount of the federal share of the grant award. Federal, required non-Federal, and excess non-federal resources can be used to make up the amount allotted for cost reimbursements.

(f) *May a sponsor pay stipends at a rate different than the rate established by the Corporation?* A sponsor shall pay stipends at the same rate as that established by the Corporation.

§ 2551.93 What are grants management requirements?

What rules govern a sponsor's management of grants?

(a) A sponsor shall manage a grant in accordance with:

(1) The Act;

(2) Regulations in this part;

(3) 45 CFR Part 2541, ''Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments'', or 45 CFR Part 2543, ''Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations';

(4) The following OMB Circulars, as appropriate A–21, ''Cost Principles for Educational Institution'', A–87, ''Cost Principles for State, Local and Indian Tribal Governments'', A–122, ''Cost Principles for Non-Profit Organizations'', and A–133, ''Audits of States, Local Governments, and Other Non-Profit Organizations'' (OMB circulars are available electronically at the OMB homepage www.whitehouse.gov/WH/EOP/omb); and

(5) Other applicable Corporation requirements.

(b) Project support provided under a Corporation grant shall be furnished at the lowest possible cost consistent with the effective operation of the project.

(c) Project costs for which Corporation funds are budgeted must be justified as being necessary and essential to project operation.

(d) Other than reimbursement for meals during a normal meal period, project funds shall not be used to reimburse volunteers for expenses, including transportation costs, incurred while performing their volunteer assignments. Equipment or supplies for volunteers on assignment are not allowable costs. Assignment-related costs of transportation, equipment, supplies, etc. are the responsibility of the volunteer station or a third party, and are not an allowable grant cost.

(e) Volunteer expense items, including transportation, meals, recognition activities and items purchased at the volunteers' own expense and which are not reimbursed, are not allowable as contributions to the non-Federal share of the budget.

(f) Costs of other insurance not required by program policy, but maintained by a sponsor for the general conduct of its activities are allowable with the following limitations:

(1) Types and extent of and cost of coverage are according to sound institutional and business practices;

(2) Costs of insurance or a contribution to any reserve covering the risk of loss of or damage to Government-owned property are unallowable unless the government specifically requires and approves such costs; and

(3) The cost of insurance on the lives of officers, trustees or staff is unallowable except where such insurance is part of an employee plan which is not unduly restricted.

(g) Costs to bring a sponsor into basic compliance with accessibility requirements for individuals with disabilities are not allowable costs.

(h) Payments to settle discrimination allegations, either informally through a settlement agreement or formally as a result of a decision finding discrimination, are not allowable costs.

(i) Written Corporation approval/concurrence is required for the following changes in the approved grant:

(1) Reduction in budgeted volunteer service years.

(2) Change in the service area.

(3) Transfer of budgeted line items from Volunteer Expenses to Support Expenses. This requirement does not apply if the 80 percent volunteer cost reimbursement ratio is maintained.

Subpart J—Non-Stipended Senior Companions.

§ 2551.101 What rule governs the recruitment and enrollment of persons who do not meet the income eligibility guidelines to serve as Senior Companions without stipends?

Over-income persons, age 60 or over, may be enrolled in SCP projects as non-stipended volunteers in communities where there is no RSVP project or where agreement is reached with the RSVP project that allows for the enrollment of non-stipended volunteers in the SCP project.

§ 2551.102 What are the conditions of service of non-stipended Senior Companions?

Non-stipended Senior Companions serve under the following conditions:

(a) They must not displace or prevent eligible low-income individuals from becoming Senior Companions.

(b) No special privilege or status is granted or created among Senior Companions, stipended or non-stipended, and equal treatment is required.

(c) Training, supervision, and other support services and cost reimbursements, other than the stipend, are available equally to all Senior Companions.

(d) All regulations and requirements applicable to the program, with the exception listed in paragraph (f) of this section, apply to all Senior Companions.

(e) Non-stipended Senior Companions may be placed in separate volunteer stations where warranted.

(f) Non-stipended Senior Companions will be encouraged but not required to serve an average of 20 hours per week and nine months per year. Senior Companions will maintain a close person-to-person relationship with their assigned special needs clients on a regular basis.

(g) Non-stipended Senior Companions may contribute the costs they incur in connection with their participation in the program. Such contributions are not counted as part of the required non-federal share of the grant but may be reflected in the budget column for excess non-federal resources.

§ 2551.103 Must a sponsor be required to enroll non-stipended Senior Companions?

Enrollment of non-stipended Senior Companions is not a factor in the award of new or continuation grants.

§ 2551.104 May Corporation funds be used for non-stipended Senior Companions?

Federally appropriated funds for SCP shall not be used to pay any cost, including any administrative cost, incurred in implementing the regulations in this part for non-stipended Senior Companions.

Subpart K—Non-Corporation Funded SCP Projects

§ 2551.111 Under what conditions can an agency or organization sponsor a Senior Companion project without Corporation funding?

An eligible agency or organization who wishes to sponsor a Senior Companion project without Corporation funding, must sign a Memorandum of Agreement with the Corporation that:

(a) Certifies its intent to comply with all Corporation requirements for the Senior Companion Program; and

(b) Identifies responsibilities to be carried out by each party.

§ 2551.112 What benefits are a non-Corporation funded project entitled to?

The Memorandum of Agreement entitles the sponsor of a non-Corporation funded project to:

(a) All technical assistance and materials provided to Corporation-funded Senior Companion projects; and

(b) The application of the provisions of 42 U.S.C. 5044 and 5058.

§ 2551.113 What financial obligation does the Corporation incur for non-Corporation funded projects?

Entry into a Memorandum of Agreement with, or issuance of an NGA to a sponsor of a non-Corporation funded project, does not create a financial obligation on the part of the Corporation for any costs associated with the project, including increases in required payments to Senior Companion's that may result from changes in the Act or in program regulations.

§ 2551.114 What happens if a non-Corporation funded sponsor does not comply with the Memorandum of Agreement?

A non-Corporation funded project sponsor's noncompliance with the Memorandum of Agreement may result in suspension or termination of the Corporation's agreement and all benefits specified in § 2551.112.

Subpart L—Restrictions and Legal Representation

§ 2551.121 What legal limitations apply to the operation of the Senior Companion Program and to the expenditure of grant funds?

(a) *Political activities.* (1) No part of any grant shall be used to finance, directly or indirectly, any activity to influence the outcome of any election to public office, or any voter registration activity.

(2) No project shall be conducted in a manner involving the use of funds, the provision of services, or the employment or assignment of personnel in a matter supporting or resulting in the identification of such project with:

(i) Any partisan or nonpartisan political activity associated with a candidate, or contending faction or group, in an election; or

(ii) Any activity to provide voters or prospective voters with transportation to the polls or similar assistance in connection with any such election; or

(iii) Any voter registration activity, except that voter registration applications and nonpartisan voter registration information may be made available to the public at the premises of the sponsor. But in making registration applications and nonpartisan voter registration information available, employees of the sponsor shall not express preferences or seek to influence decisions concerning any candidate, political party, election issue, or voting decision.

(3) The sponsor shall not use grant funds in any activity for the purpose of influencing the passage or defeat of legislation or proposals by initiative petition, except:

(i) In any case in which a legislative body, a committee of a legislative body, or a member of a legislative body requests any volunteer in, or employee of such a program to draft, review or testify regarding measures or to make representation to such legislative body, committee or member; or

(ii) In connection with an authorization or appropriations measure directly affecting the operation of the Senior Companion Program.

(b) *Non-displacement of employed workers.* A Senior Companion shall not perform any service or duty or engage in any activity which would otherwise be performed by an employed worker or which would supplant the hiring of or result in the displacement of employed workers, or impair existing contracts for service.

(c) *Compensation for service.* (1) An agency or organization to which NSSC volunteers are assigned or which operates or supervises any NSSC program shall not request or receive any compensation from NSSC volunteers or from beneficiaries for services of NSSC volunteers.

(2) This section does not prohibit a sponsor from soliciting and accepting voluntary contributions from the community at large to meet its local support obligations under the grant or from entering into agreements with parties other than beneficiaries to support additional volunteers beyond those supported by the Corporation grant.

(3) A Senior Companion volunteer station may contribute to the financial support of the Senior Companion Program. However, this support shall not be a required precondition for a potential station to obtain Senior Companion service.

(4) If a volunteer station agrees to provide funds to support additional Senior Companions or pay for other Senior Companion support costs, the agreement shall be stated in a written Memorandum of Understanding. The sponsor shall withdraw services if the station's inability to provide monetary or in-kind support to the project under the Memorandum of Understanding diminishes or jeopardizes the project's financial capabilities to fulfill its obligations.

(5) Under no circumstances shall a Senior Companion receive a fee for service from service recipients, their legal guardian, members of their family, or friends.

(d) *Labor and anti-labor activity.* The sponsor shall not use grant funds directly or indirectly to finance labor or anti-labor organization or related activity.

(e) *Fair labor standards.* A sponsor that employs laborers and mechanics for construction, alteration, or repair of facilities shall pay wages at prevailing rates as determined by the Secretary of

Labor in accordance with the Davis-Bacon Act, as amended, 40 U.S.C. 276a.

(f) *Nondiscrimination.* A sponsor or sponsor employee shall not discriminate against a Senior Companion on the basis of race, color, national origin, sex, age, religion, or political affiliation, or on the basis of disability, if the Senior Companion with a disability is qualified to serve.

(g) *Religious activities.* A Senior Companion or a member of the project staff funded by the Corporation shall not give religious instruction, conduct worship services or engage in any form of proselytization as part of his or her duties.

(h) *Nepotism.* Persons selected for project staff positions shall not be related by blood or marriage to other project staff, sponsor staff or officers, or members of the sponsor Board of Directors, unless there is written concurrence from the community group established by the sponsor under Subpart B of this part and with notification to the Corporation.

§ 2551.122 What legal coverage does the Corporation make available to Senior Companions?

It is within the Corporation's discretion to determine if Counsel is employed and counsel fees, court costs, bail and other expenses incidental to the defense of a Senior Companion are paid in a criminal, civil or administrative proceeding, when such a proceeding arises directly out of performance of the Senior Companion's activities. The circumstances under which the Corporation shall pay such expenses are specified in 45 CFR part 1220.

Dated: March 15, 1999.

Thomas L. Bryant,

Acting General Counsel.

[FR Doc. 99–6631 Filed 3–23–99; 8:45 am]

BILLING CODE 6050–28–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

45 CFR Parts 1208 and 2552

RIN 3045–AA18

Foster Grandparent Program

ACTION: Final regulations.

SUMMARY: The Corporation for National and Community Service (hereinafter the ''Corporation''), amends the regulations governing the administration of the Foster Grandparent Program (FGP). This final rule implements changes to the Domestic Volunteer Service Act of 1973 as amended, and establishes minimum program requirements with greater clarity. It updates program operations, consolidates requirements from outdated sources into one user friendly document; and incorporates new concepts of programming to highlight the accomplishments and impact of senior service. This amendment supersedes the old ACTION Foster Grandparent Program regulations and Foster Grandparent Program Operations Handbook dated January 1989.

DATES: These regulations take effect April 23, 1999.

FOR FURTHER INFORMATION CONTACT: Rey Tejada at 202–606–5000 ext. 197.

SUPPLEMENTARY INFORMATION: The Corporation published a notice of proposed rulemaking (NPRM) for the Foster Grandparent Program, 45 CFR Parts 1208 and 2552, in the **Federal Register** at 63 FR 46963, September 3, 1998.

Summary of Main Comments and Changes

In response to the Corporation's invitation in the NPRM, the Corporation received 524 letters. A significant number (73 percent) of the letters came from one state. A summary of the main comments received and the Corporation's responses are provided in this final rule. Comments that are general or editorial in nature, or those requesting clarification of program requirements are not addressed in this final rule. The significant comments and the Corporation's responses are summarized by section as follows:

Section 2552.11 What is the Foster Grandparent Program?

Comments: Expressed concern that the language proposed for § 2552.11 puts too much emphasis on service, less on the volunteers, and disregards the dual purpose of the program.

Response: The Corporation understands the concerns expressed and has modified the section to emphasize the dual purpose of the program. The first sentence of § 2552.11 was revised by adding ''for the dual purpose of engaging'' after ''organizations'', and ''and to provide a high quality experience that will enrich the lives of the volunteers'' after ''needs.''

Section 2552.12(c) Annual Income

Comments: Expressed some confusion as to whether it is mandatory to count the value of food and shelter given the use of the word ''may'' in this section, and the word ''should'' in the second sentence of § 2552.42(b).

Response: In determining income eligibility, it is the Corporation's intent to count the value of food and shelter provided at no cost to a volunteer. This is to ensure that volunteer applicants receiving such assistance do not have an undue advantage over those who do not. To make this point clear, the Corporation has amended the second sentence of this section by using the word ''shall'' instead of ''may'', and has also inserted the word ''in-kind'' after ''cash'' in the first sentence.

Section 2552.12(g) Children Having Exceptional Needs

Comments: Expressed concern that limiting services to children with special and exceptional needs would eliminate services to so called ''at-risk'' children who do not meet the definition. Others said that the examples cited exclude other types of children such as those with literacy needs; while some objected to the use of the term ''mentally retarded'' in the first sentence.

Response: The Corporation has expanded the examples by including children with literacy needs in the definition. It also deleted the term ''mentally retarded''. The Domestic Volunteer Service Act (DVSA) requires that volunteer services be focused on children with ''special or exceptional needs''.

Section 2552.12(n) National Senior Service Corps

Comments: Object to the use of the name National Senior Service Corps (NSSC) because it is not the name used in the DVSA.

Response: This name has been in use for the last several years and the Corporation has used significant resources for the development and design of a number of promotional program materials that are now in wide use by projects across the country.

Section 2552.23(f) Volunteer Orientation

Comments: Indicated that 40 hours of pre-service orientation is difficult for staff to deliver; others thought that the four hours of monthly in-service training is excessive.

Response: The Corporations understands the concerns expressed. To increase flexibility and training options, the Corporation amended the provision to provide 40 hours of orientation of which 20 hours must be pre-service. The Corporation believes four hours of monthly in-service training is essential.

Section 2552.23(i) Strategic Plan

Comments: Expressed concern that to require the development of a strategic plan would be a significant paperwork burden on projects.

Response: The Corporation understands the concerns expressed regarding the requirement and the potential burden it may produce. For this reason, the provision has been withdrawn from the final rule.

Section 2552.23(k) Assessment of Accomplishments and Impact

Comments: All expressed concern about administrative demands the requirement for assessing impact would entail.

Response: The Corporation appreciates the concern expressed. However, the provision is essential for the Corporation to meet its obligations under The Government Performance and Results Act.

Section 2552.24 Securing Community Participation

Comments: Comments were mixed. Some of the comments oppose any changes in the structure, role and operation of the Advisory Council as they were specified in previous regulations. Others support the flexibility provided by the new rule.

Response: The new provision gives local program sponsors maximum flexibility for securing community participation. It gives them discretion to use an Advisory Council or another organizational structure to meet the requirement. The Corporation believes that the new rule gives local sponsors the ability to choose whatever method works best for them to involve the community in program operations.

Section 2552.25(b) Delegation of Authority

Comments: Expressed concern about the potential increase in workload for project directors to meet this requirement. Some were also confused as to what the delegation of authority means.

Response: The Corporation has withdrawn the provision from the final rule.

Section 2552.25(d) Full-Time Project Director

Comments: Comments were mixed. Some were in support of the new rule; others wanted a provision to waive the full-time project director requirement; and a few wanted the requirement taken out of federal regulations and left at the sponsor's discretion.

Response: The Corporation modified this section by deleting from the last sentence any reference to cost savings and leaving the basis for negotiating a part-time director position to the size, scope and quality of project operations. The new rule replaces the more rigid and cumbersome waiver process required under the old regulations to employ a part-time director.

Section 2552.41 Foster Grandparent Eligibility

Comments: Suggested lowering the age eligibility from 60 to 55 to attract more volunteers into the program and broaden the potential volunteer pool.

Response: The age eligibility of volunteers is established by law. Only Congress can change this requirement and the Corporation plans to pursue that objective through the reauthorization process.

Section 2552.42 Income Guidelines

Comments: Many recommend increasing the income guideline to 150 percent of poverty. Others questioned the inclusion of the value of food and shelter provided at no cost to a volunteer in determining income.

Response: The income guideline is established by law and can only be changed through a legislative amendment. Counting the value of food, clothing and shelter provided at no cost, encourages equitable participation by not giving advantage to volunteers who receive such assistance.

Section 2552.43 What Is Considered Income

Comments: Requests special consideration for volunteers who own their homes and have related expenses.

Response: This section restates a provision in the old regulations and will be maintained. The only consideration with respect to expenses relates to extraordinary health care expenses.

Section 2552.45(a) Stipend

Comments: Expressed concern that the rule excludes eligible married couples from receiving a stipend.

Response: The Corporation, after considering the concerns expressed, has decided to withdraw subsections (a)(1) and (a)(2) in order to allow all eligible married volunteers to receive a stipend.

Section 2552.45(c) Transportation

Comments: Concern that the use of the word ''may'' in this section takes away the guarantee that volunteers will receive the transportation assistance they need to get to their assignments.

Response: After considering the comments, the Corporation modified this section by deleting the word ''may'' and using ''shall'' instead after ''Grandparents''.

Section 2552.45(d) Physical Examination

Comments: Requested that the physical examination be permitted during the first month of service rather than requiring that it be provided only prior to service. The rationale for the request is that such an approach could save money particularly in cases where volunteers terminate shortly after enrollment.

Response: The Corporation understands the rationale for the request. However, physical examinations provide some assurance that volunteers can serve without detriment to themselves or their clients. The Corporation believes this justifies the costs involved.

Section 2552.45(e) Meals and Recognition

Comments: Expressed concern that this Section reduces the value of support by limiting it to available resources and suggested that recognition be made mandatory.

Response: To emphasize its importance to the volunteers, the Corporation revised this Section by using the term ''shall be'' instead of ''are'' in the first line. The level of support volunteers receive is always governed by the resources available to a project under an approved grant.

Section 2552.51(a) (b) (c) Terms of Service

Comments: Comments were mixed. Some agree with the flexibility provided under the new rule; others thought there should be more flexibility suggesting that terms of service should be left to the discretion of the sponsor.

Response: After considering the comments, the Corporation modified this Section to allow even more flexibility in volunteers' term of service. SubSection (a) was revised to allow volunteers to serve a minimum of nine months a year at an average of 20 hours of service a week. Consistent with this amendment, subSection s (b) and (c) were deleted.

Section 2552.52 Modified Schedule

Comments: All opposed the proposed rule. Many thought the 10 year service requirement as a condition for a modified service schedule was excessive.

Response: The Corporation deleted this Section in view of the changes made on Section 2552.51 (a) on terms of service.

Section 2552.55 Volunteer Leave

Comments: Opposed this provision because it may result in less leave for volunteers. Many thought that volunteer leave should be governed by sponsor's policies.

Response: After considering the comments, the Corporation has withdrawn this provision from the final rule.

Section 2552.62(c) Care Plans

Comments: Opposed the care plan provision saying that it would increase paperwork burden on stations and raise issues of client confidentiality.

Response: The Corporation modified the provision changing ''care plan'' to a ''written volunteer assignment plan'' for each child that identifies the role and activities of the Foster Grandparent and expected outcomes for the child served.

Section 2552.71 Number of Children in a Station

Comments: All were opposed, stating that the provision is unrealistic and may be difficult for rural stations and those that cannot accommodate more than one volunteer. They suggested including a waiver provision.

Response: The Corporation has withdrawn this provision from the final rule.

Section 2552.73 Volunteer Assignments

Comments: Suggested that volunteers be permitted to serve as group leaders as an acceptable volunteer assignment.

Response: The program's authorizing legislation requires that volunteers provide supportive, person to person service to children with special or exceptional needs. The volunteer role suggested by the comments cannot be accommodated without a change in the authorizing legislation.

Section 2552.74 Care Plans

Comments: Opposed the care plan provision saying that it would increase paperwork burden on stations and raise issues of client confidentiality.

Response: The Corporation modified the provision changing ''care plan'' to a ''written volunteer assignment plan'' for each child that identifies the role and activities of the Foster Grandparent and expected outcomes for the child served.

Section 2552.81 Children Served

Comments: Objected to the use of the term children with special or exceptional needs citing that it labels children receiving volunteer services.

Response: The term children with special or exceptional needs is specified in the program's authorizing legislation. It is restated in the final rule for this reason.

Section 2552.82 Service After Age 21

Comments: Objected to the use in this Section of the term mentally retarded.

Response: The term is used because it is specified in the authorizing legislation. To change it would require a change in the law.

Section 2552.92(c) Excess Non-Corporation Support

Comments: Recommended that the Corporation not restrict the manner in which contributions in excess of the required local support are spent. They also suggest deleting the condition that such expenditure be made consistent with the provision of the Act.

Response: The final rule does not restrict the manner in which the sponsors spend contributions made in excess of the local support required. The condition that such expenditures be made consistent with the provisions of the Act is a requirement of the law.

Section 2552.92(e) Cost Reimbursement Ratio

Comments: Comments were mixed. Some are opposed to the requirement and suggest that a waiver provision be included. Others are in favor of the new provision that reduces the required cost reimbursement ratio from 90% to 80%.

Response: The new provision lessens the burden on local sponsors by reducing the required ratio under the old regulation by 10%. It ensures that volunteer support items are adequately covered in the grant budget. The Corporation believes that allowing any further reduction through a waiver provision would jeopardize the sponsor's ability to provide volunteer support.

Section 2552.93(d) Assignment Related Costs

Comments: Opposed the provision specifying that equipment or supplies for a volunteer while on assignment are not allowable costs.

Response: The provision restates a requirement under the old regulations. Limited program funds can cover only essential direct volunteer support such as transportation to and from assignment. Other costs associated with the volunteers service activity are the responsibility of the station or other third parties.

Section 2552.104 Funds for Non-Stipended Foster Grandparents

Comments: Questioned why federal funds cannot be used to pay any cost related to non-stipended volunteers when the Corporation encourages their recruitment and allows them to receive cost reimbursements other than the stipend.

Response: The rule on non-stipended volunteers is a restatement of the language in the program's authorizing legislation. The rule cannot be changed without a change in the law.

Section 2552.121(c) Compensation for Service

Comments: Requested clarifying language for subsection (3) which states that station support shall not be a precondition to the assignment of volunteers, and subsection (4) which states that the sponsor shall withdraw services if the station is unable to provide monetary and in-kind support.

Response: The Corporation modified both subsections by moving the last sentence in subsection (3) and inserted it as the first sentence in subsection (4). This adjustment clarifies the Corporation's position that a volunteer station's ability to provide cash or in-kind support shall not be a precondition to the assignment of volunteers to that station. However, if a station agrees to provide support under a Memorandum of Understanding, and later decides to withdraw that support in a manner that reduces or diminishes the ability of the project to fulfill its obligations under the grant, then the sponsor can withdraw volunteer services from that station.

Regulatory Flexibility Act and Unfunded Mandates Reform Act

The General Counsel, in accordance with the Regulatory Flexibility Act (5 U.S.C. 606(b)), has reviewed this regulation and by approving certifies that this final rule will not have a significant impact on small business entities.

Under the Unfunded Mandates Reform Act of 1995, the Corporation certifies that this final rule does not include any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year.

Paperwork Reduction Act of 1995

These final regulations have been examined under the Paperwork Reduction Act of 1995 and have been found to contain no information collection requirements.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372. The objective of the Executive Order is to foster an intergovernmental partnership and strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance. In accordance with the Order, this

document is intended to provide early notification of the Corporation's specific plans and actions for this program.

Executive Order 12866

This regulation has been drafted and reviewed in accordance with Executive Order 12866. The Office of Management and Budget has reviewed this rule and has determined that this rule is not a ''significant regulatory action'' under Executive Order 12866, section 3(f), Regulatory Planning and Review.

DISTRIBUTION TABLE

Old 45 CFR part 1208	New 45 CFR part 2552
1208.1–1	2552.11
1208.1–2	2552.12
1208.1–3	2552.23
1208.2–1	None
1208.2–2	2552.92
1208.2–3	2552.21
1208.2–4	2552.91
1208.2–5	2552.91
1208.2–6	2552.91
1208.2–7	2552.93
1208.2–8	2552.31
1208.3–1	2552.23
1208.3–2	2552.25
1208.3–3	2552.24
1208.3–4	2552.62
1208.3–5	2552.41
1208.3–6	2552.71
1208.3–7	2552.81
1208.4–1	2552.111
1208.5–1	2252.121
1208.5–2	2552.122

List of Subjects

45 CFR Part 1208

Aged, Grant programs—social programs, Reporting and recordkeeping requirements, Volunteers.

45 CFR Part 2552

Aged, Grant programs—social programs, Volunteers.

For the reasons set out in the preamble, and under the authority of 42 U.S.C. 12501 et seq., part 1208 in 45 CFR chapter XII is redesignated as part 2552 in 45 CFR chapter XXV and is revised to read as follows:

PART 2552—FOSTER GRANDPARENT PROGRAM

Subpart A—General

Sec.
2552.11 What is the Foster Grandparent Program?
2552.12 Definitions.

Subpart B—Eligibility and Responsibilities of a Sponsor

2552.21 Who is eligible to serve as a sponsor?
2552.22 What are the responsibilities of a sponsor?
2552.23 What are a sponsor's program responsibilities?
2552.24 What are a sponsor's responsibilities for securing community participation?
2552.25 What are a sponsor's administrative responsibilities?
2552.26 May a sponsor administer more than one program grant from the Corporation?

Subpart C—Suspension and Termination of Corporation Assistance

2552.31 What are the rules on suspension, termination, and denial of refunding of grants?

Subpart D—Foster Grandparent Eligibility, Status and Cost Reimbursements

2552.41 Who is eligible to be a Foster Grandparent?
2552.42 What income guidelines govern eligibility to serve as a stipended Foster Grandparent?
2552.43 What is considered income for determining volunteer eligibility?
2552.44 Is a Foster Grandparent a federal employee, an employee of the sponsor or of the volunteer station?
2552.45 What cost reimbursements are provided to Foster Grandparents?
2552.46 May the cost reimbursements of a Foster Grandparent be subject to any tax or charge, be treated as wages or compensation, or affect eligibility to receive assistance from other programs?

Subpart E—Foster Grandparent Terms of Service

2552.51 What are the terms of service of a Foster Grandparent?
2552.52 What factors are considered in determining a Foster Grandparent's service schedule?
2552.53 Under what circumstances may a Foster Grandparent's service be terminated?

Subpart F—Responsibilities of a Volunteer Station

2552.61 When may a sponsor serve as a volunteer station?
2552.62 What are the responsibilities of a volunteer station?

Subpart G—Foster Grandparent Placements and Assignments

2552.71 What requirements govern the assignment of Foster Grandparents?
2552.72 Is a written volunteer assignment plan required for each volunteer?

Subpart H—Children Served

2552.81 What type of children are eligible to be served?
2552.82 Under what circumstances may a Foster Grandparent continue to serve an individual beyond his or her 21st birthday?

Subpart I—Application and Fiscal Requirements

2552.91 What is the process for application and award of a grant?
2552.92 What are project funding requirements?
2552.93 What are grants management requirements?

Subpart J—Non-Stipended Foster Grandparents

2552.101 What rule governs the recruitment and enrollment of persons who do not meet the income eligibility guidelines to serve as Foster Grandparents without stipends?
2552.102 What are the conditions of service of non-stipended Foster Grandparents?
2552.103 Must a sponsor be required to enroll non-stipended Foster Grandparents?
2552.104 May Corporation funds be used for non-stipended Foster Grandparents?

Subpart K—Non-Corporation Funded Foster Grandparent Program Projects

2552.111 Under what conditions can an agency or organization sponsor a Foster Grandparent project without Corporation funding?
2552.112 What benefits are a non-Corporation funded project entitled to?
2552.113 What financial obligation does the Corporation incur for non-Corporation funded projects?
2552.114 What happens if a non-Corporation funded sponsor does not comply with the Memorandum of Agreement?

Subpart L—Restrictions and Legal Representation

2552.121 What legal limitations apply to the operation of the Foster Grandparent Program and to the expenditure of grant funds?
2552.122 What legal coverage does the Corporation make available to Foster Grandparents?

Authority: 42 U.S.C. 4950 *et seq.*

Subpart A—General

§ 2552.11 What is the Foster Grandparent Program?

The Foster Grandparent Program provides grants to qualified agencies and organizations for the dual purpose of: engaging persons 60 and older, particularly those with limited incomes, in volunteer service to meet critical community needs; and to provide a high quality experience that will enrich the lives of the volunteers. Program funds are used to support Foster Grandparents in providing supportive, person to

person service to children with exceptional or special needs.

§ 2552.12 Definitions.

(a) *Act.* The Domestic Volunteer Service Act of 1973, as amended, Pub. L. 93–113, Oct. 1, 1973, 87 Stat. 396, 42 U.S.C. 4950 *et seq.*

(b) *Adequate staffing level.* The number of project staff or full-time equivalent needed by a sponsor to manage NSSC project operations considering such factors as: number of budgeted volunteers/Volunteer Service Years (VSYs), number of volunteer stations, and the size of the service area.

(c) *Annual income.* Total cash and in-kind receipts from all sources over the preceding 12 months including: the applicant or enrollee's income and, the applicant or enrollee's spouse's income, if the spouse lives in the same residence. The value of shelter, food, and clothing, shall be counted if provided at no cost by persons related to the applicant/enrollee, or spouse.

(d) *Chief Executive Officer.* The Chief Executive Officer of the Corporation appointed under the National and Community Service Act of 1990, as amended, (NCSA), 42 U.S.C. 12501 *et seq.*

(e) *Child.* Any individual who is less than 21 years of age.

(f) *Children having exceptional needs.* Children who are developmentally disabled, such as those who are autistic, have cerebral palsy or epilepsy, are visually impaired, speech impaired, hearing impaired, orthopedically impaired, are emotionally disturbed or have a language disorder, specific learning disability, have multiple disabilities, other significant health impairment or have literacy needs. Existence of a child's exceptional need shall be verified by an appropriate professional, such as a physician, psychiatrist, psychologist, registered nurse or licensed practical nurse, speech therapist or educator before a Foster Grandparent is assigned to the child.

(g) *Children with special needs.* Children who are abused or neglected; in need of foster care; adjudicated youth; homeless youths; teen-age parents; and children in need of protective intervention in their homes. Existence of a child's special need shall be verified by an appropriate professional before a Foster Grandparent is assigned to the child.

(h) *Corporation.* The Corporation for National and Community Service established under the NCSA. The Corporation is also sometimes referred to as CNCS.

(i) *Cost reimbursements.* Reimbursements provided to volunteers such as stipends to cover incidental costs, meals, and transportation, to enable them to serve without cost to themselves. Also included are the costs of annual physical examinations, volunteer insurance and recognition which are budgeted as Volunteer Expenses.

(j) *In-home.* The non-institutional assignment of a Foster Grandparent in a private residence or a foster home.

(k) *Letter of Agreement.* A written agreement between a volunteer station, the sponsor and the parent or persons legally responsible for the child served by the Foster Grandparent. It authorizes the assignment of a Foster Grandparent in the child's home, defines the Foster Grandparent's activities and delineates specific arrangements for supervision.

(l) *Memorandum of Understanding.* A written statement prepared and signed by the Foster Grandparent project sponsor and the volunteer station that identifies project requirements, working relationships and mutual responsibilities.

(m) *National Senior Service Corps (NSSC).* The collective name for the Foster Grandparent Program (FGP), the Retired and Senior Volunteer Program (RSVP), the Senior Companion Program (SCP), and Demonstration Programs established under Title II Parts A, B, C, and E, of the Act. NSSC is also referred to as the ''Senior Corps''.

(n) *Non-Corporation support (required).* The percentage share of non-Federal cash and in-kind contributions, required to be raised by the sponsor in support of the grant.

(o) *Non-Corporation support (excess).* The amount of non-Federal cash and in-kind contributions generated by a sponsor in excess of the required percentage.

(p) *Parent.* A natural parent or a person acting in place of a natural parent, such as a guardian, a child's natural grandparent, or a step-parent with whom the child lives. The term also includes otherwise unrelated individuals who are legally responsible for a child's welfare.

(q) *Project.* The locally planned and implemented Foster Grandparent Program activity or set of activities as agreed upon between a sponsor and the Corporation.

(r) *Qualified individual with a disability.* An individual with a disability (as defined in the Rehabilitation Act, 29 U.S.C. 705 (20)) who, with or without reasonable accommodation, can perform the essential functions of a volunteer position that such individual holds or desires. If a sponsor has prepared a written description before advertising or interviewing applicants for the position, the written description may be considered evidence of the essential functions of the volunteer position.

(s) *Service area.* The geographically defined area in which Foster Grandparents are recruited, enrolled, and placed on assignments.

(t) *Service schedule.* A written delineation of the days and times a Foster Grandparent serves each week.

(u) *Sponsor.* A public agency or private non-profit organization that is responsible for the operation of a Foster Grandparent project.

(v) *Stipend.* A payment to Foster Grandparents to enable them to serve without cost to themselves. The amount of the stipend is determined by the Corporation and is payable in regular installments. The minimum amount of the stipend is set by law and shall be adjusted by the CEO from time to time.

(w) *Trust Act.* The National and Community Service Trust Act of 1993, Pub. L. 103–82, Sept. 21, 1993, 107 Stat. 785.

(x) *United States and States.* Each of the several States, the District of Columbia, the U.S. Virgin Islands, the Commonwealth of Puerto Rico, Guam and American Samoa, and Trust Territories of the Pacific Islands.

(y) *Volunteer assignment plan.* A written description of a Foster Grandparent's assignment with a child. The plan identifies specific outcomes for the child served and the activities of the Foster Grandparent.

(z) *Volunteer station.* A public agency, private non-profit organization or proprietary health care agency or organization that accepts the responsibility for assignment and supervision of Foster Grandparents in health, education, social service or related settings such as hospitals, homes for dependent and neglected children, or similar establishments. Each volunteer station must be licensed or otherwise certified, when required, by the appropriate state or local government. Private homes are not volunteer stations.

Subpart B—Eligibility and Responsibilities of a Sponsor

§ 2552.21 Who is eligible to serve as a sponsor?

The Corporation awards grants to public agencies, including Indian tribes and non-profit private organizations, in the United States that have the authority to accept and the capability to administer a Foster Grandparent project.

§ 2552.22 What are the responsibilities of a sponsor?

A sponsor is responsible for fulfilling all project management requirements necessary to accomplish the purposes of the Foster Grandparent Program as specified in the Act. A sponsor shall not delegate or contract these responsibilities to another entity. A sponsor shall comply with all program regulations and policies, and grant provisions prescribed by the Corporation.

§ 2552.23 What are a sponsor's program responsibilities?

A sponsor shall:

(a) Focus Foster Grandparent resources on critical problems affecting children with special and exceptional needs within the project's service area.

(b) Assess in collaboration with other community organizations or utilize existing assessment of the needs of the client population in the community and develop strategies to respond to those needs using the resources of Foster Grandparents.

(c) Develop and manage a system of volunteer stations by:

(1) Ensuring that a volunteer station is a public or non-profit private organization, or an eligible proprietary health care agency, capable of serving as a volunteer station for the placement of Foster Grandparents;

(2) Ensuring that the placement of Foster Grandparents will be governed by a Memorandum of Understanding:

(i) That is negotiated prior to placement;

(ii) That specifies the mutual responsibilities of the station and sponsor;

(iii) That is renegotiated at least every three years; and

(iv) That states the station assures it will not discriminate against Foster Grandparents or in the operation of its program on the basis of race, color, national origin, sex, age, political affiliation, religion, or on the basis of disability, if the participant or member is a qualified individual with a disability; and

(3) Reviewing volunteer placements regularly to ensure that clients are eligible to be served.

(d) Develop Foster Grandparent service opportunities to support locally-identified needs of eligible children in a way that considers the skills and experiences of Foster Grandparents.

(e) Consider the demographic make-up of the project service area in the enrollment of Foster Grandparents, taking special efforts to recruit eligible individuals from minority groups, persons with disabilities, and under-represented groups.

(f) Provide Foster Grandparents with assignments that show direct and demonstrable benefits to the children and the community served, the Foster Grandparents, and the volunteer station; with required cost reimbursements specified in § 2552.45; with not less than 40 hours of orientation of which 20 hours must be pre-service, and an average of 4 hours of monthly in-service training.

(g) Encourage the most efficient and effective use of Foster Grandparents by coordinating project services and activities with related national, state and local programs, including other Corporation programs.

(h) Conduct an annual appraisal of volunteers' performance and annual review of their income eligibility.

(i) Develop, and annually update, a plan for promoting senior service within the project's service area.

(j) Annually assess the accomplishments and impact of the project on the identified needs and problems of the client population in the community.

(k) Establish written service policies for Foster Grandparents that include but are not limited to annual and sick leave, holidays, service schedules, termination, appeal procedures, meal and transportation reimbursements.

§ 2552.24 What are a sponsor's responsibilities for securing community participation?

(a) A sponsor shall secure community participation in local project operation by establishing an Advisory Council or a similar organizational structure with a membership that includes people:

(1) Knowledgeable of human and social needs of the community;

(2) Competent in the field of community service, volunteerism and children's issues;

(3) Capable of helping the sponsor meet its administrative and program responsibilities including fund-raising, publicity and programming for impact;

(4) With interest in and knowledge of the capability of older adults; and

(5) Of a diverse composition that reflects the demographics of the service area.

(b) The sponsor determines how such participation shall be secured consistent with the provisions of paragraphs (a)(1) through (a)(5) of this section.

§ 2552.25 What are a sponsor's administrative responsibilities?

A sponsor shall:

(a) Assume full responsibility for securing maximum and continuing community financial and in-kind support to operate the project successfully.

(b) Provide levels of staffing and resources appropriate to accomplish the purposes of the project and carry out its project management responsibilities.

(c) Employ a full-time project director to accomplish program objectives and manage the functions and activities delegated to project staff for NSSC program(s) within its control. A full-time project director shall not serve concurrently in another capacity, paid or unpaid, during established working hours. The project director may participate in activities to coordinate program resources with those of related local agencies, boards or organizations. A sponsor may negotiate the employment of a part-time project director with the Corporation when it can be demonstrated that such an arrangement will not adversely affect the size, scope, and quality of project operations.

(d) Consider all project staff as sponsor employees subject to its personnel policies and procedures.

(e) Compensate project staff at a level that is comparable with other similar staff positions in the sponsor organization and/or project service area.

(f) Establish risk management policies and procedures covering project and Foster Grandparent activities. This includes provision of appropriate insurance coverage for Foster Grandparents, vehicles and other properties used in the project.

(g) Establish record keeping/reporting systems in compliance with Corporation requirements that ensure quality of program and fiscal operations, facilitate timely and accurate submission of required reports and cooperate with Corporation evaluation and data collection efforts.

(h) Comply with and ensure that all volunteer stations comply with all applicable civil rights laws and regulations, including providing reasonable accommodation to qualified individuals with disabilities.

§ 2552.26 May a sponsor administer more than one program grant from the Corporation?

A sponsor may administer more than one Corporation program grant.

Subpart C—Suspension and Termination of Corporation Assistance

§ 2552.31 What are the rules on suspension, termination, and denial of refunding of grants?

(a) The Chief Executive Officer or designee is authorized to suspend further payments or to terminate payments under any grant providing assistance under the Act whenever he/she determines there is a material

failure to comply with applicable terms and conditions of the grant. The Chief Executive Officer shall prescribe procedures to ensure that:

(1) Assistance under the Act shall not be suspended for failure to comply with applicable terms and conditions, except in emergency situations for thirty days;

(2) An application for refunding under the Act may not be denied unless the recipient has been given:

(i) Notice at least 75 days before the denial of such application of the possibility of such denial and the grounds for any such denial; and

(ii) Opportunity to show cause why such action should not be taken;

(3) In any case where an application for refunding is denied for failure to comply with the terms and conditions of the grant, the recipient shall be afforded an opportunity for an informal hearing before an impartial hearing officer, who has been agreed to by the recipient and the Corporation; and

(4) Assistance under the Act shall not be terminated for failure to comply with applicable terms and conditions unless the recipient has been afforded reasonable notice and opportunity for a full and fair hearing.

(b) In order to assure equal access to all recipients, such hearings or other meetings as may be necessary to fulfill the requirements of this section shall be held in locations convenient to the recipient agency.

(c) The procedures for suspension, termination, and denial of refunding, that apply to the Foster Grandparent Program are specified in 45 CFR part 1206.

Subpart D—Foster Grandparent Eligibility, Status and Cost Reimbursements

§ 2552.41 Who is eligible to be a Foster Grandparent?

(a) To be a Foster Grandparent an individual must:

(1) Be 60 years of age or older;

(2) Be determined by a physical examination to be capable, with or without reasonable accommodation, of serving children with exceptional or special needs without detriment to either himself/herself or the children served;

(3) Agree to abide by all requirements as set forth in this part; and

(4) In order to receive a stipend, have an income that is within the income eligibility guidelines specified in this subpart D.

(b) Eligibility to be a Foster Grandparent shall not be restricted on the basis of formal education, experience, race, religion, color, national origin, sex, age, handicap, or political affiliation.

§ 2552.42 What income guidelines govern eligibility to serve as a stipended Foster Grandparent?

(a) To be enrolled and receive a stipend, a Foster Grandparent cannot have an annual income from all sources, after deducting allowable medical expenses, which exceeds the program's income eligibility guideline for the state in which he or she resides. The income eligibility guideline for each state is the higher amount of either:

(1) 125 percent of the poverty line as set forth in 42 U.S.C. 9902 (2); or

(2) 135 percent of the poverty line, in those primary metropolitan statistical areas (PMSA), metropolitan statistical areas (MSA) and non-metropolitan counties identified by the Corporation as being higher in cost of living, as determined by application of the Volunteers in Service to America (VISTA) subsistence rates. In Alaska the guideline may be waived by the Corporation State Director if a project demonstrates that low-income individuals in that location are participating in the project.

(b) Annual income is counted for the past 12 months and includes the applicant or enrollee's income and that of his/her spouse, if the spouse lives in the same residence. Sponsors shall count the value of shelter, food, and clothing, if provided at no cost by persons related to the applicant, enrollee, or spouse.

(c) Allowable medical expenses are annual out-of-pocket medical expenses for health insurance premiums, health care services, and medications provided to the applicant, enrollee, or spouse which were not and will not be paid by Medicare, Medicaid, other insurance, or other third party pay or, and which do not exceed 15 percent of the applicable income guideline.

(d) Applicants whose income is not more than 100 percent of the poverty line shall be given special consideration for enrollment.

(e) Once enrolled, a Foster Grandparent shall remain eligible to serve and to receive a stipend so long as his or her income, does not exceed the applicable income eligibility guideline by 20 percent.

§ 2552.43 What is considered income for determining volunteer eligibility?

(a) For determining eligibility, ''income'' refers to total cash and in-kind receipts before taxes from all sources including:

(1) Money, wages, and salaries before any deduction, but not including food or rent in lieu of wages;

(2) Receipts from self-employment or from a farm or business after deductions for business or farm expenses;

(3) Regular payments for public assistance, Social Security, Unemployment or Workers Compensation, strike benefits, training stipends, alimony, child support, and military family allotments, or other regular support from an absent family member or someone not living in the household;

(4) Government employee pensions, private pensions, and regular insurance or annuity payments; and

(5) Income from dividends, interest, net rents, royalties, or income from estates and trusts.

(b) For eligibility purposes, income does not refer to the following money receipts:

(1) Any assets drawn down as withdrawals from a bank, sale of property, house or car, tax refunds, gifts, one-time insurance payments or compensation from injury.

(2) Non-cash income, such as the bonus value of food and fuel produced and consumed on farms and the imputed value of rent from owner-occupied farm or non-farm housing.

§ 2552.44 Is a Foster Grandparent a federal employee, an employee of the sponsor or of the volunteer station?

Foster Grandparents are volunteers, and are not employees of the sponsor, the volunteer station, the Corporation, or the Federal Government.

§ 2552.45 What cost reimbursements are provided to Foster Grandparents?

Cost reimbursements include:

(a) *Stipend.* Foster Grandparents who are income eligible will receive a stipend in an amount determined by the Corporation and payable in regular installments, to enable them to serve without cost to themselves. The stipend is paid for the time Foster Grandparents spend with their assigned children, for earned leave, and for attendance at official project events.

(b) *Insurance.* A Foster Grandparent is provided with the Corporation-specified minimum levels of insurance as follows:

(1) *Accident insurance.* Accident insurance covers Foster Grandparents for personal injury during travel between their homes and places of assignment, during their volunteer service, during meal periods while serving as a volunteer, and while attending project-sponsored activities. Protection shall be provided against claims in excess of any benefits or services for medical care or treatment available to the volunteer from other sources.

(2) *Personal liability insurance.* Protection is provided against claims in excess of protection provided by other insurance. It does not include professional liability coverage.

(3) *Excess automobile liability insurance.* (i) For Foster Grandparents who drive in connection with their service, protection is provided against claims in excess of the greater of either:

(A) Liability insurance volunteers carry on their own automobiles; or

(B) The limits of applicable state financial responsibility law, or in its absence, levels of protection to be determined by the Corporation for each person, each accident, and for property damage.

(ii) Foster Grandparents who drive their personal vehicles to or on assignments or project-related activities shall maintain personal automobile liability insurance equal to or exceeding the levels established by the Corporation.

(c) *Transportation.* Foster Grandparents shall receive assistance with the cost of transportation to and from volunteer assignments and official project activities, including orientation, training, and recognition events.

(d) *Physical examination.* Foster Grandparents are provided a physical examination prior to assignment and annually thereafter to ensure that they will be able to provide supportive service without injury to themselves or the children served.

(e) *Meals and recognition.* Foster Grandparents shall be provided the following within limits of the project's available resources:

(1) Assistance with the cost of meals taken while on assignment; and

(2) Recognition for their service.

§ 2552.46 May the cost reimbursements of a Foster Grandparent be subject to any tax or charge, be treated as wages or compensation, or affect eligibility to receive assistance from other programs?

No. Foster Grandparent's cost reimbursements are not subject to any tax or charge or treated as wages or compensation for the purposes of unemployment insurance, worker's compensation, temporary disability, retirement, public assistance, or similar benefit payments or minimum wage laws. Cost reimbursements are not subject to garnishment, and do not reduce or eliminate the level of, or eligibility for, assistance or services a Foster Grandparent may be receiving under any governmental program.

Subpart E—Foster Grandparent Terms of Service

§ 2552.51 What are the terms of service of a Foster Grandparent?

A Foster Grandparent shall serve a minimum of nine months a year for an average of 20 hours of service per week. A Foster Grandparent shall not serve more than 1044 hours per year.

§ 2552.52 What factors are considered in determining a Foster Grandparent's service schedule?

(a) Travel time between the Foster Grandparent's home and place of assignment is not part of the service schedule and is not stipended.

(b) Travel time between individual assignments is a part of the service schedule and is stipended.

(c) Meal time may be part of the service schedule and is stipended only if it is specified in the goal statement as part of the service activity.

§ 2552.53 Under what circumstances may a Foster Grandparent's service be terminated?

(a) A sponsor may remove a Foster Grandparent from service for cause. Grounds for removal include but are not limited to: extensive and unauthorized absences; misconduct; inability to perform assignments; and failure to accept supervision. A Foster Grandparent may also be removed from service for having income in excess of the eligibility level.

(b) The sponsor shall establish appropriate policies on service termination as well as procedures for appeal from such adverse action.

Subpart F—Responsibilities of a Volunteer Station

§ 2552.61 When may a sponsor serve as a volunteer station?

(a) A sponsor may function as a volunteer station if it is:

(1) A State organization administering a statewide Foster Grandparent project where the volunteer station is part of the State organization; or

(2) A Federal or State-recognized Indian tribal government.

(b) Other sponsors not included in the categories specified in paragraphs (a)(1) and (a)(2) of this section, can serve as a volunteer station provided that no more than 20 percent of its budgeted VSYs can be placed in programs administered by such sponsors. In special circumstances, the Corporation may grant a waiver to increase this percentage.

§ 2552.62 What are the responsibilities of a volunteer station?

A volunteer station shall undertake the following responsibilities in support of Foster Grandparent volunteers:

(a) Develop volunteer assignments that meet the requirements specified in §§ 2552.71 through 2552.72 and regularly assess those assignments for continued appropriateness.

(b) Select eligible children for assigned volunteers.

(c) Develop a written volunteer assignment plan for each child that identifies the role and activities of the Foster Grandparent and expected outcomes for the child served.

(d) Obtain a Letter of Agreement for Foster Grandparents assigned in-home. This letter must comply with all Federal, State and local regulations.

(e) Provide Foster Grandparents serving the station with:

(1) Orientation to the station and any in-service training necessary to enhance performance of assignments;

(2) Resources required for performance of assignments including reasonable accommodation; and

(3) Appropriate recognition.

(f) Designate a staff member to oversee fulfillment of station responsibilities and supervision of Foster Grandparents while on assignment.

(g) Keep records and prepare reports required by the sponsor.

(h) Provide for the safety of Foster Grandparents assigned to it.

(i) Comply with all applicable civil rights laws and regulations including reasonable accommodation for Foster Grandparents with disabilities.

(j) Undertake such other responsibilities as may be necessary to the successful performance of Foster Grandparents in their assignments or as agreed to in the Memorandum of Understanding.

Subpart G—Foster Grandparent Placements and Assignments

§ 2552.71 What requirements govern the assignment of Foster Grandparents?

Foster Grandparent assignments shall:

(a) Provide for Foster Grandparents to give direct services to one or more eligible children. Foster Grandparents cannot be assigned to roles such as teacher's aides, group leaders or other similar positions that would detract from the person-to-person relationship.

(b) Result in person-to-person supportive relationships with each child served.

(c) Support the development and growth of each child served.

(d) Be meaningful to the Foster Grandparent.

(e) Be supported by appropriate orientation, training and supervision.

§ 2552.72 Is a written volunteer assignment plan required for each volunteer?

(a) All Foster Grandparents shall receive a written volunteer assignment plan developed by the volunteer station that:

(1) Is approved by the sponsor and accepted by the Foster Grandparent;

(2) Identifies the individual child(ren) to be served;

(3) Identifies the role and activities of the Foster Grandparent and expected outcomes for the child;

(4) Addresses the period of time each child should receive such services; and

(5) Is used to review the status of the Foster Grandparent's services in working with the assigned child, as well as the impact of the assignment on the child's development.

(b) If there is an existing plan that incorporates paragraphs (a)(2), (3), and (4) of this section, that plan shall meet the requirement.

Subpart H—Children Served

§ 2552.81 What type of children are eligible to be served?

Foster Grandparents serve only children and youth with special and exceptional needs who are less than 21 years of age.

§ 2552.82 Under what circumstances may a Foster Grandparent continue to serve an individual beyond his or her 21st birthday?

(a) Only when a Foster Grandparent has been assigned to, and has developed a relationship with, a mentally retarded child, that assignment may continue beyond the individual's 21st birthday, provided that:

(1) Such individual was receiving such services prior to attaining the chronological age of 21, and the continuation of service is in the best interest of the individual; and

(2) The sponsor determines that it is in the best interest of both the Foster Grandparent and the individual for the assignment to continue. Such a determination will be made through mutual agreement by all parties involved in the provision of services to the individual served.

(b) In cases where the assigned Foster Grandparent becomes unavailable to serve a particular individual, the sponsor may select another Foster Grandparent to continue the service.

(c) The sponsor may terminate service to a mentally retarded individual over age 21, if it determines that such service is no longer in the best interest of either the Foster Grandparent or the individual served.

Subpart I—Application and Fiscal Requirements

§ 2552.91 What is the process for application and award of a grant?

(a) *How and when may an eligible organization apply for a grant?*

(1) An eligible organization may file an application for a grant at any time.

(2) Before submitting an application an applicant shall determine the availability of funds from the Corporation.

(3) The Corporation may also solicit grants. Applicants solicited under this provision are not assured of selection or approval and may have to compete with other solicited or unsolicited applications.

(b) *What must an eligible organization include in a grant application?*

(1) An applicant shall complete standard forms prescribed by the Corporation.

(2) The applicant shall comply with the provisions of Executive Order 12372 ''Intergovernmental Review of Federal Programs,'' (3 CFR, 1982 Comp., p.197) in 45 CFR Part 1233, and any other applicable requirements.

(c) *Who reviews the merits of an application and how is a grant awarded?*

(1) The Corporation reviews and determines the merit of an application by its responsiveness to published guidelines and to the overall purpose and objectives of the program. When funds are available, the Corporation awards a grant in writing to each applicant whose grant proposal provides the best potential for serving the purpose of the program. The award will be documented by Notice of Grant Award (NGA).

(2) The Corporation and the sponsoring organization are the parties to the NGA. The NGA will document the sponsor's commitment to fulfill specific programmatic objectives and financial obligations. It will document the extent of the Corporation's obligation to provide financial support to the sponsor.

(d) *What happens if the Corporation rejects an application?* The Corporation will return an application that is not approved for funding to the applicant with an explanation of the Corporation's decision.

(e) *For what period of time does the Corporation award a grant?* The Corporation awards a Foster Grandparent grant for a specified period that is usually 12 months in duration.

§ 2552.92 What are project funding requirements?

(a) *Is non-Corporation support required?* A Corporation grant may be awarded to fund up to 90 percent of the cost of development and operation of a Foster Grandparent project. The sponsor is required to contribute at least 10 percent of the total project cost from non-Federal sources or authorized Federal sources.

(b) *Under what circumstances does the Corporation allow less than the 10 percent non-Corporation support?* The Corporation may allow exceptions to the 10 percent local support requirement in cases of demonstrated need such as:

(1) Initial difficulties in the development of local funding sources during the first three years of operations; or

(2) An economic downturn, the occurrence of a natural disaster, or similar events in the service area that severely restrict or reduce sources of local funding support; or

(3) The unexpected discontinuation of local support from one or more sources that a project has relied on for a period of years.

(c) *May the Corporation restrict how a sponsor uses locally generated contributions in excess of the 10 percent non-Corporation support required?* Whenever locally generated contributions to Foster Grandparent projects are in excess of the minimum 10 percent non-Corporation support required, the Corporation may not restrict the manner in which such contributions are expended provided such expenditures are consistent with the provisions of the Act.

(d) *Are program expenditures subject to audit?* All expenditures by the grantee of Federal and non-Federal funds, including expenditures from excess locally generated contributions in support of the grant, are subject to audit by the Corporation, its Inspector General or their authorized agents.

(e) *How are Foster Grandparent cost reimbursements budgeted?* The total of cost reimbursements for Foster Grandparents, including stipends, insurance, transportation, meals, physical examinations, and recognition, shall be a sum equal to at least 80 percent of the amount of the federal share of the grant award. Federal, required and excess non-Corporation resources can be used to make up the amount allotted for cost reimbursements.

(f) *May a sponsor pay stipends at a rate different than the rate established by the Corporation?* A sponsor shall pay stipends at the same rate as that established by the Corporation.

§ 2552.93 What are grants management requirements?

What rules govern a sponsor's management of grants?

(a) A sponsor shall manage a grant awarded in accordance with:

(1) The Act;

(2) Regulations in this part;

(3) 45 CFR Part 2541, ''Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments'', or 45 CFR Part 2543, ''Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations'';

(4) The following OMB Circulars, as appropriate A–21, ''Cost Principles for Educational Institutions'', A–87, ''Cost Principles for State, Local and Indian Tribal Governments'', A–122, ''Cost Principles for Non-Profit Organizations'', and A–133, ''Audits of States, Local Governments, and Other Non-Profit Organizations'' (OMB circulars are available electronically at the OMB homepage www.whitehouse.gov/WH/EOP/omb); and

(5) Other applicable Corporation requirements.

(b) Project support provided under a Corporation grant shall be furnished at the lowest possible cost consistent with the effective operation of the project.

(c) Project costs for which Corporation funds are budgeted must be justified as being necessary and essential to project operation.

(d) Other than reimbursement for meals during a normal meal period, project funds shall not be used to reimburse volunteers for expenses, including transportation costs, incurred while performing their volunteer assignments. Equipment or supplies for volunteers on assignment are not allowable costs. Assignment-related costs of transportation, equipment, supplies, etc. are the responsibility of the volunteer station or a third party, and are not an allowable grant cost.

(e) Volunteer expense items, including transportation, meals, recognition activities and items purchased at the volunteers' own expense and which are not reimbursed, are not allowable as contributions to the non-Federal share of the budget.

(f) Costs of other insurance not required by program policy, but maintained by a sponsor for the general conduct of its activities are allowable with the following limitations:

(1) Types and extent of and cost of coverage are according to sound institutional and business practices;

(2) Costs of insurance or a contribution to any reserve covering the risk of loss of or damage to Government-owned property are unallowable unless the government specifically requires and approves such costs; and

(3) The cost of insurance on the lives of officers, trustees or staff is unallowable except where such insurance is part of an employee plan which is not unduly restricted.

(g) Costs to bring a sponsor into basic compliance with accessibility requirements for individuals with disabilities are not allowable costs.

(h) Payments to settle discrimination allegations, either informally through a settlement agreement or formally as a result of a decision finding discrimination, are not allowable costs.

(i) Written Corporation approval/concurrence is required for the following changes in the approved grant:

(1) Reduction in budgeted volunteer service years.

(2) Change in the service area.

(3) Transfer of budgeted line items from Volunteer Expenses to Support Expenses. This requirement does not apply if the 80 percent volunteer cost reimbursement ratio is maintained.

Subpart J—Non-Stipended Foster Grandparents

§ 2552.101 What rule governs the recruitment and enrollment of persons who do not meet the income eligibility guidelines to serve as Foster Grandparents without stipends?

Over-income persons, age 60 or over, may be enrolled in FGP projects as non-stipended volunteers in communities where there is no RSVP project or where agreement is reached with the RSVP project that allows for the enrollment of non-stipended volunteers in the FGP project.

§ 2552.102 What are the conditions of service of non-stipended Foster Grandparents?

Non-stipended Foster Grandparents serve under the following conditions:

(a) They must not displace or prevent eligible low-income individuals from becoming Foster Grandparents.

(b) No special privilege or status is granted or created among Foster Grandparents, stipended or non-stipended, and equal treatment is required.

(c) Training, supervision, and other support services and cost reimbursements, other than the stipend, are available equally to all Foster Grandparents.

(d) All regulations and requirements applicable to the program, with the exception listed in paragraph (f) of this section, apply to all Foster Grandparents.

(e) Non-stipended Foster Grandparents may be placed in separate volunteer stations where warranted.

(f) Non-stipended Foster Grandparents will be encouraged but not required to serve an average of 20 hours per week and nine months per year. Foster Grandparents will maintain a close person-to-person relationship with their assigned children on a regular basis.

(g) Non-stipended Foster Grandparents may contribute the costs they incur in connection with their participation in the program. Such contributions are not counted as part of the required non-federal share of the grant but may be reflected in the budget column for excess non-federal resources.

§ 2552.103 Must a sponsor be required to enroll non-stipended Foster Grandparents?

Enrollment of non-stipended Foster Grandparents is not a factor in the award of new or continuation grants.

§ 2552.104 May Corporation funds be used for non-stipended Foster Grandparents?

Federally appropriated funds for FGP shall not be used to pay any cost, including any administrative cost, incurred in implementing the regulations in this part for non-stipended Foster Grandparents.

Subpart K—Non-Corporation Funded Foster Grandparent Program Projects

§ 2552.111 Under what conditions can an agency or organization sponsor a Foster Grandparent project without Corporation funding?

An eligible agency or organization who wishes to sponsor a Foster Grandparent project without Corporation funding, must sign a Memorandum of Agreement with the Corporation that:

(a) Certifies its intent to comply with all Corporation requirements for the Foster Grandparent Program; and

(b) Identifies responsibilities to be carried out by each party.

§ 2552.112 What benefits are a non-Corporation funded project entitled to?

The Memorandum of Agreement entitles the sponsor of a non-Corporation funded project to:

(a) All technical assistance and materials provided to Corporation-funded Foster Grandparent projects; and

(b) The application of the provisions of 42 U.S.C. 5044 and 5058.

§ 2552.113 What financial obligation does the Corporation incur for non-Corporation funded projects?

Entry into a Memorandum of Agreement with, or issuance of an NGA

to a sponsor of a non-Corporation funded project, does not create a financial obligation on the part of the Corporation for any costs associated with the project, including increases in required payments to Foster Grandparents that may result from changes in the Act or in program regulations.

§ 2552.114 What happens if a non-Corporation funded sponsor does not comply with the Memorandum of Agreement?

A non-Corporation funded project sponsor's noncompliance with the Memorandum of Agreement may result in suspension or termination of the Corporation's agreement and all benefits specified in § 2552.112.

Subpart L—Restrictions and Legal Representation

§ 2552.121 What legal limitations apply to the operation of the Foster Grandparent Program and to the expenditure of grant funds?

(a) *Political activities.* (1) No part of any grant shall be used to finance, directly or indirectly, any activity to influence the outcome of any election to public office, or any voter registration activity.

(2) No project shall be conducted in a manner involving the use of funds, the provision of services, or the employment or assignment of personnel in a matter supporting or resulting in the identification of such project with:

(i) Any partisan or nonpartisan political activity associated with a candidate, or contending faction or group, in an election; or

(ii) Any activity to provide voters or prospective voters with transportation to the polls or similar assistance in connection with any such election; or

(iii) Any voter registration activity, except that voter registration applications and nonpartisan voter registration information may be made available to the public at the premises of the sponsor. But in making registration applications and nonpartisan voter registration information available, employees of the sponsor shall not express preferences or seek to influence decisions concerning any candidate, political party, election issue, or voting decision.

(3) The sponsor shall not use grant funds in any activity for the purpose of influencing the passage or defeat of legislation or proposals by initiative petition, except:

(i) In any case in which a legislative body, a committee of a legislative body, or a member of a legislative body requests any volunteer in, or employee of such a program to draft, review or testify regarding measures or to make representation to such legislative body, committee or member; or

(ii) In connection with an authorization or appropriations measure directly affecting the operation of the FGP.

(b) *Non-displacement of employed workers.* A Foster Grandparent shall not perform any service or duty or engage in any activity which would otherwise be performed by an employed worker or which would supplant the hiring of or result in the displacement of employed workers, or impair existing contracts for service.

(c) *Compensation for service.* (1) An agency or organization to which NSSC volunteers are assigned, or which operates or supervises any NSSC program shall not request or receive any compensation from NSSC volunteers or from beneficiaries for services of NSSC volunteers.

(2) This section does not prohibit a sponsor from soliciting and accepting voluntary contributions from the community at large to meet its local support obligations under the grant or from entering into agreements with parties other than beneficiaries to support additional volunteers beyond those supported by the Corporation grant.

(3) A Foster Grandparent volunteer station may contribute to the financial support of the FGP. However, this support shall not be a required precondition for a potential station to obtain Foster Grandparent service.

(4) If a volunteer station agrees to provide funds to support additional Foster Grandparents or pay for other Foster Grandparent support costs, the agreement shall be stated in a written Memorandum of Understanding. The sponsor shall withdraw services if the station's inability to provide monetary or in-kind support to the project under the Memorandum of Understanding diminishes or jeopardizes the project's financial capabilities to fulfill its obligations.

(5) Under no circumstances shall a Foster Grandparent receive a fee for service from service recipients, their legal guardian, members of their family, or friends.

(d) *Labor and anti-labor activity.* The sponsor shall not use grant funds directly or indirectly to finance labor or anti-labor organization or related activity.

(e) *Fair labor standards.* A sponsor that employs laborers and mechanics for construction, alteration, or repair of facilities shall pay wages at prevailing rates as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended, 40 U.S.C. 276a.

(f) *Nondiscrimination.* A sponsor or sponsor employee shall not discriminate against a Foster Grandparent on the basis of race, color, national origin, sex, age, religion, or political affiliation, or on the basis of disability, if the Foster Grandparent with a disability is qualified to serve.

(g) *Religious activities.* A Foster Grandparent or a member of the project staff funded by the Corporation shall not give religious instruction, conduct worship services or engage in any form of proselytization as part of his or her duties.

(h) *Nepotism.* Persons selected for project staff positions shall not be related by blood or marriage to other project staff, sponsor staff or officers, or members of the sponsor Board of Directors, unless there is written concurrence from the community group established by the sponsor under Subpart B of this part and with notification to the Corporation.

§ 2552.122 What legal coverage does the Corporation make available to Foster Grandparents?

It is within the Corporation's discretion to determine if Counsel is employed and counsel fees, court costs, bail and other expenses incidental to the defense of a Foster Grandparent are paid in a criminal, civil or administrative proceeding, when such a proceeding arises directly out of performance of the Foster Grandparent's activities pursuant to the Act. The circumstances under which the Corporation may pay such expenses are specified in 45 CFR part 1220.

Dated: March 15, 1999.

Thomas L. Bryant,

Acting General Counsel.

[FR Doc. 99–6630 Filed 3–23–99; 8:45 am]

BILLING CODE 6050–28–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

45 CFR Parts 1209 and 2553

RIN 3045–AA19

Retired and Senior Volunteer Program

ACTION: Final regulations.

SUMMARY: The Corporation for National and Community Service, (hereinafter the ''Corporation''), amends the regulations governing the administration of the Retired and Senior Volunteer Program (RSVP). This final rule implements changes to the Domestic Volunteer Service Act of 1973

as amended, and establishes minimum program requirements with greater clarity. It updates program operations, consolidates requirements from outdated sources into one user friendly document; and incorporates new concepts of programming to highlight the accomplishments and impact of senior service. This amendment supersedes the old ACTION regulations and RSVP Operations Handbook 4700 dated May 1989.

DATES: These regulations take effect April 23, 1999.

FOR FURTHER INFORMATION CONTACT: Rey Tejada at 202–606–5000 ext.197.

SUPPLEMENTARY INFORMATION: The Corporation published a notice of proposed rulemaking (NPRM) for the Retired and Senior Volunteer Program 45 CFR Parts 1209 and 2553 in the **Federal Register** at 63 FR 46972, September 3, 1998.

Summary of Main Comments and Changes

In response to the Corporation's invitation in the NPRM, the Corporation received 79 letters. A significant number (44 percent) of the letters came from one state. A summary of the main comments received and the Corporation's responses are provided in this final rule. Comments that are general or editorial in nature, or those requesting clarification of program requirements are not addressed in this final rule. The significant comments and the Corporation's responses are summarized by section as follows:

Section 2553.11 What is the Retired and Senior Volunteer Program?

Comments: Expressed concern that the language proposed for § 2553.11 puts too much emphasis on service and less on the volunteers.

Response: The Corporation understands the concerns expressed and has modified the section to emphasize the dual purpose of the program. The first sentence of § 2553.11 was revised by adding ''for the dual purpose of engaging'' after ''organizations'', ''to meet critical community needs'' after ''service'' and ''and to provide a high quality experience that will enrich the lives of the volunteers.'' after ''needs''.

Section 2553.12(j) National Senior Service Corps

Comments: Objected to the use of the name National Senior Service Corps (NSSC) because it is not the name used in the DVSA.

Response: This name has been in use for the last several years and the Corporation has used significant resources for the development and design of a number of promotional program materials that are now in wide use by projects across the country.

Section 2553.23(a) Focusing Resources on Critical Needs

Comments: Objected to this requirement for being labor intensive and reducing the emphasis on assignments that are not outcome based.

Response: The Corporation appreciates the concerns expressed. However, the program's resources need to be focused on critical needs and this provision is essential to meet our obligation under the Government Performance and Results Act.

Section 2553.23(b) Assessment of Needs

Comments: The requirement may duplicate the work of other local organizations.

Response: The Corporation amended the provision to clarify that needs assessment may be conducted by the project or other community organizations.

Section 2553.23(d) Special Efforts to Recruit Minorities

Comments: Objected to the requirement that special efforts be made to recruit members of under represented groups.

Response: This provision restates a requirement from the old regulations and is based on a specific mandate from the DVSA.

Section 2553.23(f) Strategic Plan

Comments: Expressed concern that to require the development of a strategic plan would be a significant paperwork burden on projects.

Response: The Corporation understands the concerns expressed regarding the requirement and the potential burden it may produce. For this reason, the provision has been withdrawn from the final rule.

Section 2553.23(g) Plan for Promoting Service

Comments: Objected to the requirement and view it as a burden.

Response: The Corporation provides funding to each sponsor to cover the cost of program operations and considers promotion of service by older adults an essential part of operating the program.

Section 2553.23(h) Assessment of Accomplishments and Impact

Comments: Expressed concern about administrative demands the requirement for assessing impact would entail.

Response: The Corporation appreciates the concern expressed. However, the provision is essential for the Corporation to meet its obligations under the Government Performance and Results Act.

Section 2553.24 Securing Community Participation

Comments: The comments were mixed. Some oppose any changes in the structure, role and operation of the Advisory Council as they were specified in previous regulations. Others support the flexibility provided by the new rule.

Response: The new provision gives local program sponsors maximum flexibility for securing community participation. It gives them discretion to use an Advisory Council or another organizational structure to meet the requirement. The Corporation believes that the new rule gives local sponsors the ability to choose whatever method works best for them to involve the community in program operations.

Section 2553.25(b) Delegation of Authority

Comments: Expressed about the potential increase in work load for project directors to meet this requirement. Some were also confused as to what the delegation of authority means.

Response: After considering the concerns expressed, the Corporation has withdrawn the provision from the final rule.

Section 2553.25(d) Full-time Project Director

Comments: Objected to the policy provision on full-time project director.

Response: After considering the comments, the Corporation modified this section by deleting from the last sentence any reference to cost savings and leaving the basis for negotiating a part-time director position to the size, scope and quality of project operations. The new rule replaces the more rigid and cumbersome waiver process required under the old regulations to employ a part-time director.

Section 2553.43(a) Transportation

Comments: Expressed concern that the use of the word ''may'' in this section takes away the guarantee that volunteers will receive the transportation assistance they need to get to their assignments.

Response: After considering the comments, the Corporation modified this section by deleting the word ''may'' and using ''shall'' instead after ''RSVP volunteers.''

Section 2553.51 Terms of Service

Comments: The comments were mixed. Most believed there should be more flexibility to allow the project to count seasonal volunteers.

Response: After considering the comments, the Corporation modified this section by deleting the second sentence that required monthly service. This revision would allow weekly or short term assignments consistent with the volunteer's assignment description.

Section § 2553.61 Sponsor As Volunteer Station

Comments: Many expressed concern that the rule would prohibit volunteers from serving in programs administered by the sponsor. Others objected to the three year limit placed on projects to implement program initiatives in areas where there are no volunteer stations.

Response: After considering the comments, the Corporation replaced this section with a provision in the old regulation which allowed the assignment of volunteers in programs run by the sponsor, and for the project to serve as a volunteer station under certain conditions.

Section § 2553.62 Station Responsibilities

Comments: Objected generally to the responsibilities specified as being burdensome and may cause some volunteer stations to drop from the program.

Response: The Corporation reexamined the provision and finds that the responsibilities specified are needed to protect the welfare of volunteers while on assignment and enhance the impact of their services.

Section 2553.62(a)(2) Station Staff to Oversee Volunteers

Comments: Claimed that the requirement is unrealistic and not consistent with the intent of RSVP.

Response: This provision is a restatement of a requirement prescribed under the old regulations. The Corporation believes the requirement is necessary to provide adequate support for volunteers while they are on assignment.

Section 2553.91(c) Compensation for Service

Comments: Requested clarifying language for subsection (3) which states that station support shall not be a precondition to the assignment of volunteers, and subsection (4) which states that the sponsor shall withdraw services if the station is unable to provide monetary and in-kind support.

Response: The Corporation modified both subsections by moving the last sentence in subsection (3) and inserted it as the first sentence in subsection (4). This adjustment clarifies the Corporation's position that a volunteer station's ability to provide cash or in-kind support is not a precondition to the assignment of volunteers to that station. However, if a station agrees to provide support under a Memorandum of Understanding, but later decides to withdraw that support in a manner that reduces or diminishes the ability of the project to fulfill its obligations under the grant, then the sponsor can withdraw volunteer services from that station.

Regulatory Flexibility Act and Unfunded Mandates Reform Act

The General Counsel, in accordance with the Regulatory Flexibility Act (5 U.S.C. 606(b)), has reviewed this regulation and by approving certifies that this final rule will not have a significant impact on small business entities.

Under the Unfunded Mandates Reform Act of 1995, the Corporation certifies that this final rule does not include any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year.

Paperwork Reduction Act of 1995

These final regulations have been examined under the Paperwork Reduction Act of 1995 and have been found to contain no information collection requirements.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372. The objective of the Executive Order is to foster an intergovernmental partnership and strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance. In accordance with the Order, this document is intended to provide early notification of the Corporation's specific plans and actions for this program.

Executive Order 12866

This regulation has been drafted and reviewed in accordance with Executive Order 12866. The Office of Management and Budget has reviewed this rule and has determined that this rule is not a ''significant regulatory action'' under Executive Order 12866, section 3(f), Regulatory Planning and Review.

DISTRIBUTION TABLE

Old 45 CFR part 1209	New 45 CFR part 2553
1209.1–1	2553.11
1209.1–2	2553.12
1209.1–3	2553.23
1209.2–1	None
1209.2–2	2553.72
1209.2–3	2553.21
1209.2–4	2553.71
1209.2–5	2553.71
1209.2–6	2553.71
1209.2–7	2553.73
1209.2–8	2553.31
1209.3–1	2553.23
1209.3–2	2553.25
1209.3–3	2553.24
1209.3–4	2553.62
1209.3–5	2553.41
1209.3–6	2553.23
1209.3–7	None
1209.4–1	2553.81
1209.5–1	2553.91
1209.5–2	2553.92

List of Subjects

45 CFR Part 1209

Aged, Government contracts, Grant programs—social programs, Reporting and recordkeeping requirements, Volunteers.

45 CFR Part 2553

Aged, Grant programs—social programs, Volunteers.

For the reasons set out in the preamble, and under the authority of 42 U.S.C. 12501 *et seq.*, part 1209 in 45 CFR chapter XII is redesignated as part 2553 in 45 CFR chapter XXV and is revised to read as follows:

PART 2553—THE RETIRED AND SENIOR VOLUNTEER PROGRAM

Subpart A—General

Sec.
2553.11 What is the Retired and Senior Volunteer Program?
2553.12 Definitions.

Subpart B—Eligibility and Responsibilities of a Sponsor

2553.21 Who is eligible to serve as a sponsor?
2553.22 What are the responsibilities of a sponsor?
2553.23 What are a sponsor's program responsibilities?
2553.24 What are a sponsor's responsibilities for securing community participation?
2553.25 What are a sponsor's administrative responsibilities?
2553.26 May a sponsor administer more than one program grant from the Corporation?

Subpart C—Suspension, Termination and Denial of Refunding

2553.31 What are the rules on suspension, termination and denial of refunding of grants?

Subpart D—Eligibility, Cost Reimbursements and Volunteer Assignments

2553.41 Who is eligible to be a RSVP volunteer?
2553.42 Is a RSVP volunteer a federal employee, an employee of the sponsor or of the volunteer station?
2553.43 What cost reimbursements are provided to RSVP volunteers?
2553.44 May cost reimbursements received by a RSVP volunteer be subject to any tax or charge, treated as wages or compensation, or affect eligibility to receive assistance from other programs?

Subpart E—Volunteer Terms of Service

2553.51 What are the terms of service of a RSVP volunteer?
2553.52 Under what circumstances may a RSVP volunteer's service be terminated?

Subpart F—Responsibilities of a Volunteer Station

2553.61 When may a sponsor serve as a volunteer station?
2553.62 What are the responsibilities of a volunteer station?

Subpart G—Application and Fiscal Requirements

2553.71 What is the process for application and award of a grant?
2553.72 What are project funding requirements?
2553.73 What are grants management requirements?

Subpart H—Non-Corporation Funded Projects

2553.81 Under what conditions may an agency or organization sponsor a RSVP project without Corporation funding?
2553.82 What benefits are a non-Corporation funded project entitled to?
2553.83 What financial obligation does the Corporation incur for non-Corporation funded projects?
2553.84 What happens if a non-Corporation funded sponsor does not comply with the Memorandum of Agreement?

Subpart I—Restrictions and Legal Representation

2553.91 What legal limitations apply to the operation of the RSVP Program and to the expenditure of grant funds?
2553.92 What legal coverage does the Corporation make available to RSVP volunteers.

Authority: 42 U.S.C. 4950 *et seq.*

Subpart A—General

§ 2553.11 What is the Retired and Senior Volunteer Program?

The Retired and Senior Volunteer Program (RSVP) provides grants to qualified agencies and organizations for the dual purpose of: engaging persons 55 and older in volunteer service to meet critical community needs; and to provide a high quality experience that will enrich the lives of volunteers.

§ 2553.12 Definitions.

(a) *Act.* The Domestic Volunteer Service Act of 1973, as amended, Pub. L. 93–113, Oct. 1, 1973, 87 Stat. 396, 42 U.S.C. 4950 *et seq.*

(b) *Adequate staffing level.* The number of project staff or full-time equivalent needed by a sponsor to manage NSSC project operations considering such factors as: number of budgeted volunteers, number of volunteer stations, and the size of the service area.

(c) *Assignment.* The activities, functions or responsibilities to be performed by volunteers identified in a written outline or description.

(d) *Chief Executive Officer.* The Chief Executive Officer of the Corporation appointed under the National and Community Service Act of 1990, as amended, (NCSA), 42 U.S.C. 12501 *et seq.*

(e) *Corporation.* The Corporation for National and Community Service established under the NCSA. The Corporation is also sometimes referred to as CNCS.

(f) *Cost reimbursements.* Reimbursements budgeted as Volunteer Expenses and provided to volunteers to cover incidental costs, meals, transportation, volunteer insurance, and recognition to enable them to serve without cost to themselves.

(g) *Letter of Agreement.* A written agreement between a volunteer station, the sponsor, and person(s) served or the person legally responsible for that person. It authorizes the assignment of a RSVP volunteer in the home of a client, defines RSVP volunteer activities, and specifies supervision arrangements.

(h) *Memorandum of Understanding.* A written statement prepared and signed by the RSVP project sponsor and the volunteer station that identifies project requirements, working relationships and mutual responsibilities.

(i) *National Senior Service Corps (NSSC).* The collective name for the Foster Grandparent Program (FGP), the Retired and Senior Volunteer Program (RSVP), and the Senior Companion Program (SCP), and Demonstration Programs established under Parts A, B, C, and E, Title II of the Act. NSSC is also referred to as the ''Senior Corps''.

(j) *Non-Corporation support (required).* The percentage share of non-Federal cash and in-kind contributions required to be raised by the sponsor in support of the grant, including non-Corporation federal, state and local governments and privately raised contributions.

(k) *Non-Corporation support (excess).* The amount of non-Federal cash and in-kind contributions generated by a sponsor in excess of the required percentage.

(l) *Project.* The locally planned and implemented RSVP activity or set of activities in a service area as agreed upon between a sponsor and the Corporation.

(m) *Qualified individual with a disability.* An individual with a disability (as defined in the Rehabilitation Act, 29 U.S.C. 705 (20)) who, with or without reasonable accommodation, can perform the essential functions of a volunteer position that such individual holds or desires. If a sponsor has prepared a written description before advertising or interviewing applicants for the position, the written description may be considered evidence of the essential functions of the volunteer position.

(n) *Service area.* The geographically defined area approved in the grant application, in which RSVP volunteers are recruited, enrolled, and placed on assignments.

(o) *Sponsor.* A public agency or private non-profit organization that is responsible for the operation of a RSVP project.

(p) *Trust Act.* The National and Community Service Trust Act of 1993, as amended, Public Law 103–82, Sept. 21, 1993, 107 Stat. 785.

(q) *United States and States.* Each of the several States, the District of Columbia, the U.S. Virgin Islands, the Commonwealth of Puerto Rico, Guam and American Samoa, and Trust Territories of the Pacific Islands.

(r) *Volunteer station.* A public agency, private non-profit organization or proprietary health care agency or organization that accepts responsibility for assignment, supervision and training of RSVP volunteers. Each volunteer station must be licensed or otherwise certified, when required, by appropriate state or local government. Private homes are not volunteer stations.

Subpart B—Eligibility and Responsibilities of a Sponsor

§ 2553.21 Who is eligible to serve as a sponsor?

The Corporation awards grants to public agencies, including Indian tribes and non-profit private organizations, in the United States that have the authority to accept and the capability to administer a RSVP project.

§ 2553.22 What are the responsibilities of a sponsor?

A sponsor is responsible for fulfilling all project management requirements necessary to accomplish the purposes of the RSVP program as specified in the Act. A sponsor shall not delegate or contract these responsibilities to another entity. A sponsor shall comply with all regulations contained in this part, policies, and grant provisions prescribed by the Corporation.

§ 2553.23 What are a sponsor's program responsibilities?

A sponsor shall:

(a) Focus RSVP resources to have a positive impact on critical human and social needs within the project service area.

(b) Assess in collaboration with other community organizations or utilize existing assessments of the needs of the community or service area and develop strategies to respond to those needs using the resources of RSVP volunteers.

(c) Develop and manage a system of volunteer stations to provide a wide range of placement opportunities that appeal to persons age 55 and over by:

(1) Ensuring that a volunteer station is a public or non-profit private organization or an eligible proprietary health care agency capable of serving as a volunteer station for the placement of RSVP volunteers to meet locally identified needs;

(2) Ensuring the placement of RSVP volunteers is governed by a Memorandum of Understanding:

(i) That is negotiated prior to placement;

(ii) That specifies the mutual responsibilities of the station and sponsor;

(iii) That is renegotiated at least every three years; and

(iv) That states the station assures it will not discriminate against RSVP volunteers or in the operation of its program on the basis of race, color, national origin, sex, age, political affiliation, religion, or on the basis of disability, if the participant or member is a qualified individual with a disability; and

(3) Annually assessing the placement of RSVP volunteers to ensure the safety of volunteers and their impact on meeting the needs of the community.

(d) Consider the demographic make-up of the project service area in the enrollment of RSVP volunteers, taking special efforts to recruit eligible individuals from minority groups, persons with disabilities and under represented groups.

(e) Encourage the most efficient and effective use of RSVP volunteers by coordinating project services and activities with related national, state and local programs, including other Corporation programs.

(f) Develop, and annually update, a plan for promoting service by older adults within the project service area.

(g) Conduct an annual assessment of the accomplishments and impact of the project and how they meet the identified needs and problems of the community.

(h) Provide RSVP volunteers with cost reimbursements specified in § 2553.43.

§ 2553.24 What are a sponsor's responsibilities for securing community participation?

(a) A sponsor shall secure community participation in local project operation by establishing an Advisory Council or a similar organizational structure with a membership that includes people:

(1) Knowledgeable about human and social needs of the community;

(2) Competent in the field of community service and volunteerism;

(3) Capable of helping the sponsor meet its administrative and program responsibilities including fund-raising, publicity and programming for impact;

(4) With an interest in and knowledge of the capability of older adults; and

(5) Of a diverse composition that reflects the demographics of the service area.

(b) The sponsor determines how this participation shall be secured, consistent with the provisions of paragraphs (a)(1) through (a)(5) of this section.

§ 2553.25 What are a sponsor's administrative responsibilities?

A sponsor shall:

(a) Assume full responsibility for securing maximum and continuing community financial and in-kind support to operate the project successfully.

(b) Provide levels of staffing and resources appropriate to accomplish the purposes of the project and carry out its project management responsibilities.

(c) Employ a full-time project director to accomplish program objectives and manage the functions and activities delegated to project staff for NSSC program(s) within its control. A full-time project director shall not serve concurrently in another capacity, paid or unpaid, during established working hours. The project director may participate in activities to coordinate program resources with those of related local agencies, boards or organizations. A sponsor may negotiate the employment of a part-time project director with the Corporation when it can be demonstrated that such an arrangement will not adversely affect the size, scope and quality of project operations.

(d) Consider all project staff as sponsor employees subject to its personnel policies and procedures.

(e) Compensate project staff at a level that is comparable with similar staff positions in the sponsor organization and/or project service area.

(f) Establish risk management policies and procedures covering project and RSVP activities. This includes provision of appropriate insurance coverage for RSVP volunteers, vehicles and other properties used in the project.

(g) Establish record keeping and reporting systems in compliance with Corporation requirements that ensure quality of program and fiscal operations, facilitate timely and accurate submission of required reports and cooperate with Corporation evaluation and data collection efforts.

(h) Comply with and ensure that all volunteer stations comply with all applicable civil rights laws and regulations, including providing reasonable accommodation to qualified individuals with disabilities.

§ 2553.26 May a sponsor administer more than one program grant from the Corporation?

A sponsor may administer more than one Corporation program grant.

Subpart C—Suspension, Termination and Denial of Refunding

§ 2553.31 What are the rules on suspension, termination and denial of refunding of grants?

(a) The Chief Executive Officer or designee is authorized to suspend further payments or to terminate payments under any grant providing assistance under the Act whenever he or she determines there is a material failure to comply with applicable terms and conditions of the grant. The Chief Executive Officer shall prescribe procedures to insure that:

(1) Assistance under the Act shall not be suspended for failure to comply with applicable terms and conditions, except in emergency situations for thirty days;

(2) An application for refunding under the Act may not be denied unless the recipient has been given:

(i) Notice at least 75 days before the denial of such application of the possibility of such denial and the grounds for any such denial; and

(ii) Opportunity to show cause why such action should not be taken;

(3) In any case where an application for refunding is denied for failure to comply with the terms and conditions

of the grant, the recipient shall be afforded an opportunity for an informal hearing before an impartial hearing officer, who has been agreed to by the recipient and the Corporation; and

(4) Assistance under the Act shall not be terminated for failure to comply with applicable terms and conditions unless the recipient has been afforded reasonable notice and opportunity for a full and fair hearing.

(b) In order to assure equal access to all recipients, such hearings or other meetings as may be necessary to fulfill the requirements of this section shall be held in locations convenient to the recipient agency.

(c) The procedures for suspension, termination, and denial of refunding, that apply to the Retired and Senior Volunteer Program are specified in 45 CFR Part 1206.

Subpart D—Eligibility, Cost Reimbursements and Volunteer Assignments

§ 2553.41 Who is eligible to be a RSVP volunteer?

(a) To be an RSVP volunteer, an individual must:

(1) Be 55 years of age or older;

(2) Agree to serve without compensation;

(3) Reside in or nearby the community served by RSVP;

(4) Agree to abide by all requirements as set forth in this part.

(b) Eligibility to serve as a RSVP volunteer shall not be restricted on the basis of formal education, experience, race, religion, color, national origin, sex, age, handicap or political affiliation.

§ 2553.42 Is a RSVP volunteer a federal employee, an employee of the sponsor or of the volunteer station?

RSVP volunteers are not employees of the sponsor, the volunteer station, the Corporation, or the Federal Government.

§ 2553.43 What cost reimbursements are provided to RSVP volunteers?

RSVP volunteers are provided the following cost reimbursements within the limits of the project's available resources:

(a) *Transportation.* RSVP volunteers shall receive assistance with the cost of transportation to and from volunteer assignments and official project activities, including orientation, training, and recognition events. On-the-job or assignment related transportation costs are the responsibility of the volunteer station or a third party.

(b) *Meals.* RSVP volunteers shall receive assistance with the cost of meals taken while on assignment.

(c) *Recognition.* RSVP volunteers shall be provided recognition for their service.

(d) *Insurance.* A RSVP volunteer is provided with the Corporation-specified minimum levels of insurance as follows:

(1) *Accident insurance.* Accident insurance covers RSVP volunteers for personal injury during travel between their homes and places of assignment, during their volunteer service, during meal periods while serving as a volunteer, and while attending project sponsored activities. Protection shall be provided against claims in excess of any benefits or services for medical care or treatment available to the volunteer from other sources.

(2) *Personal liability insurance.* Protection is provided against claims in excess of protection provided by other insurance. It does not include professional liability coverage.

(3) *Excess automobile liability insurance.* (i) For RSVP volunteers who drive in connection with their service, protection is provided against claims in excess of the greater of either:

(A) Liability insurance the volunteers carry on their own automobiles; or

(B) The limits of applicable state financial responsibility law, or in its absence, levels of protection to be determined by the Corporation for each person, each accident, and for property damage.

(ii) RSVP volunteers who drive their personal vehicles to or on assignments or project-related activities shall maintain personal automobile liability insurance equal to or exceeding the levels established by the Corporation.

§ 2553.44 May cost reimbursements received by a RSVP volunteer be subject to any tax or charge, treated as wages or compensation, or affect eligibility to receive assistance from other programs?

No. RSVP volunteers' cost reimbursements are not subject to any tax or charge and are not treated as wages or compensation for the purposes of unemployment insurance, worker's compensation, temporary disability, retirement, public assistance, or similar benefit payments or minimum wage laws. Cost reimbursements are not subject to garnishment, do not reduce or eliminate the level of or eligibility for assistance or services a volunteer may be receiving under any governmental program.

Subpart E—Volunteer Terms of Service

§ 2553.51 What are the terms of service of a RSVP volunteer?

A RSVP volunteer shall serve weekly on a regular basis, or intensively on short-term assignments consistent with the assignment description.

§ 2553.52 Under what circumstances may a RSVP volunteer's service be terminated?

(a) A sponsor may remove a RSVP volunteer from service for cause. Grounds for removal include but are not limited to: extensive and unauthorized absences; misconduct; inability to perform assignments; and failure to accept supervision.

(b) The sponsor shall establish appropriate policies on service termination as well as procedures for appeal from such adverse action.

Subpart F—Responsibilities of a Volunteer Station

§ 2553.61 When may a sponsor serve as a volunteer station?

The sponsor may function as a volunteer station, provided that no more than 5% of the total number of volunteers budgeted for the project are assigned to it in administrative or support positions. This limitation does not apply to the assignment of volunteers to other programs administered by the sponsor or special volunteer activities of the project. The RSVP project itself may function as a volunteer station or may initiate special volunteer activities provided the Corporation agrees that these activities are in accord with program objectives and will not hinder overall project operations.

§ 2553.62 What are the responsibilities of a volunteer station?

A volunteer station shall undertake the following responsibilities in support of RSVP volunteers:

(a) Develop volunteer assignments that impact critical human and social needs, and regularly assess those assignments for continued appropriateness;

(b) Assign staff member responsible for day to day oversight of the placement of RSVP volunteers within the volunteer station and for assessing the impact of volunteers in addressing community needs;

(c) Obtain a Letter of Agreement for an RSVP volunteer assigned in-home. The Letter of Agreement shall comply with all Federal, State and local regulations;

(d) Keep records and prepare reports as required;

(e) Comply with all applicable civil rights laws and regulations including reasonable accommodation for RSVP volunteers with disabilities; and

(f) Provide assigned RSVP volunteers the following support:

(1) Orientation to station and appropriate in-service training to enhance performance of assignments;

(2) Resources required for performance of assignments including reasonable accommodation;

(3) Supervision while on assignment;

(4) Appropriate recognition; and

(5) Provide for the safety of RSVP volunteers assigned to it.

(g) Undertake such other responsibilities as may be necessary to the successful performance of RSVP volunteers in their assignments or as agreed to in the Memorandum of Understanding.

Subpart G—Application and Fiscal Requirements

§ 2553.71 What is the process for application and award of a grant?

(a) *How and when may an eligible organization apply for a grant?*

(1) An eligible organization may file an application for a RSVP grant at any time.

(2) Before submitting an application, an applicant shall determine the availability of funds.

(3) The Corporation may also solicit grant applicants. Applicants solicited by the Corporation are not assured of selection or approval and may have to compete with other solicited or unsolicited applicants.

(b) *What must an eligible organization include in a grant application?*

(1) An applicant shall complete standard forms prescribed by the Corporation.

(2) The applicant shall comply with the provisions of Executive Order 12372, the ''Intergovernmental Review of Federal Programs,'' (3 CFR, 1982 Comp., p. 197) in 45 CFR part 1233, and any other applicable requirements.

(c) *Who reviews the merits of a RSVP application and how is a grant awarded?*

(1) The Corporation reviews and determines the merit of an application by its responsiveness to published guidelines and to the overall purpose and objectives of the program. When funds are available, the Corporation awards a grant in writing to each applicant whose grant proposal provides the best potential for serving the purpose of the program. The award will be documented by a Notice of Grant Award (NGA).

(2) The Corporation and the sponsoring organization are parties to the NGA. The NGA will document the sponsor's commitment to fulfill specific programmatic objectives and financial obligations. It will document the extent of the Corporation's obligation to provide financial support to the sponsor.

(d) *What happens if the Corporation rejects an application?* The Corporation will return to the applicant an application that is not approved for funding, with an explanation of the Corporation's decision.

(e) *For what period of time does the Corporation award a grant?* The Corporation awards a RSVP grant for a specified period that is usually 12 months in duration.

§ 2553.72 What are project funding requirements?

(a) *Is non-Corporation support required?*

(1) A Corporation grant may be awarded to fund up to 90 percent of the total project cost in the first year, 80 percent in the second year, and 70 percent in the third and succeeding years.

(2) A sponsor is responsible for identifying non-Corporation funds which may include in-kind contributions.

(b) *Under what circumstances does the Corporation allow less than the percentage identified in paragraph (a) of this section?* The Corporation may allow exceptions to the local support requirement identified in paragraph (a) of this section in cases of demonstrated need such as:

(1) Initial difficulties in the development of local funding sources during the first three years of operations; or

(2) An economic downturn, the occurrence of a natural disaster, or similar events in the service area that severely restrict or reduce sources of local funding support; or

(3) The unexpected discontinuation of local support from one or more sources that a project has relied on for a period of years.

(c) *May the Corporation restrict how a sponsor uses locally generated contributions in excess of the non-Corporation support required?* Whenever locally generated contributions to RSVP projects are in excess of the non-Corporation funds required (10 percent of the total cost in the first year, 20 percent in the second year and 30 percent in the third and succeeding years), the Corporation may not restrict the manner in which such contributions are expended provided such expenditures are consistent with the provisions of the Act.

(d) *Are program expenditures subject to audit?* All expenditures by the grantee of Federal and Non-Federal funds, including expenditures from excess locally generated contributions, are subject to audit by the Corporation, its Inspector General, or their authorized agents.

(e) *How much of the grant must be budgeted to pay volunteer expenses or cost reimbursements?* The total volunteer expenses and cost reimbursements for RSVP volunteers, including transportation, meals, recognition and insurance shall be an amount equal to at least 25 percent of the Corporation funds in the grant award. Corporation and non-Corporation resources may be used to make up this sum.

§ 2553.73 What are grants management requirements?

What rules govern a sponsor's management of grants?

(a) A sponsor shall manage a grant awarded in accordance with:

(1) The Act;

(2) Regulations in this part;

(3) 45 CFR Part 2541, ''Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments'', or 45 CFR Part 2543, ''Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations'';

(4) The following OMB Circulars, as appropriate A–21, ''Cost Principles for Educational Institutions'', A–87, ''Cost Principles for State, Local and Indian Tribal Governments'', A–122, ''Cost Principles for Non-Profit Organizations'', and A–133, ''Audits of States, Local Governments, and Other Non-Profit Organizations'' (OMB circulars are available electronically at the OMB homepage www.whitehouse.gov/WH/EOP/omb); and

(5) Other applicable Corporation requirements.

(b) Project support provided under a Corporation grant shall be furnished at the lowest possible cost consistent with the effective operation of the project.

(c) Project costs for which Corporation funds are budgeted must be justified as being essential to project operation.

(d) Project funds shall not be used to reimburse volunteers for expenses, including transportation costs, incurred while performing their volunteer assignments. Volunteers on assignment during a normal meal period may be reimbursed for the meal cost. Equipment or supplies for volunteers on assignment are not allowable costs. Assignment related costs of transportation, equipment, supplies, etc. are the responsibility of the volunteer station or a third party.

(e) Volunteer expense items, including transportation, meals,

recognition activities and items purchased at the volunteers own expense that are not reimbursed, are not allowable as contributions to the non-Federal share of the budget.

(f) Costs of other insurance not required by program policy, but maintained by a sponsor for the general conduct of its activities are allowable with the following limitations:

(1) Types and extent of and cost of coverage are according to sound institutional and business practices;

(2) Costs of insurance or a contribution to any reserve covering the risk of loss of or damage to Government-owned property are unallowable unless the government specifically requires and approves such costs; and

(3) The cost of insurance on the lives of officers, trustees or staff is unallowable except where such insurance is part of an employee plan which is not unduly restricted.

(g) Costs to bring a sponsor into basic compliance with accessibility requirements for individuals with disabilities are not allowable costs.

(h) Payments to settle discrimination allegations, either informally through a settlement agreement or formally as a result of a decision finding discrimination, are not allowable costs.

(i) Written Corporation State Office approval/concurrence is required for the following changes in the approved grant:

(1) Change in the approved service area.

(2) Transfer of budgeted line items from Volunteer Expenses to Support Expenses. This requirement does not apply if the 25 percent cost reimbursement ratio is maintained.

Subpart H—Non-Corporation Funded Projects

§ 2553.81 Under what conditions may an agency or organization sponsor a RSVP project without Corporation funding?

An eligible agency or organization who wishes to sponsor a RSVP project without Corporation funding, must sign a Memorandum of Agreement with the Corporation that:

(a) Certifies its intent to comply with all Corporation requirements for the Retired and Senior Volunteer Program; and

(b) Identifies responsibilities to be carried out by each party.

§ 2553.82 What benefits are a non-Corporation funded project entitled to?

(a) All technical assistance and materials provided to Corporation-funded RSVP projects; and

(b) The application of the provisions of 42 U.S.C. 5044 and 5058.

§ 2553.83 What financial obligation does the Corporation incur for non-Corporation funded projects?

Entry into a Memorandum of Agreement with, or issuance of an NGA to a sponsor of a non-Corporation funded project does not create a financial obligation on the part of the Corporation for any costs associated with the project.

§ 2553.84 What happens if a non-Corporation funded sponsor does not comply with the Memorandum of Agreement?

A non-Corporation funded project sponsor's noncompliance with the Memorandum of Agreement may result in suspension or termination of the Corporation's agreement and all benefits specified in § 2553.82.

Subpart I—Restrictions and Legal Representation

§ 2553.91 What legal limitations apply to the operation of the RSVP Program and to the expenditure of grant funds?

(a) *Political activities.* (1) No part of any grant shall be used to finance, directly or indirectly, any activity to influence the outcome of any election to public office, or any voter registration activity.

(2) No project shall be conducted in a manner involving the use of funds, the provision of services, or the employment or assignment of personnel in a matter supporting or resulting in the identification of such project with:

(i) Any partisan or nonpartisan political activity associated with a candidate, or contending faction or group, in an election; or

(ii) Any activity to provide voters or prospective voters with transportation to the polls or similar assistance in connection with any such election; or

(iii) Any voter registration activity, except that voter registration applications and nonpartisan voter registration information may be made available to the public at the premises of the sponsor. But in making registration applications and nonpartisan voter registration information available, employees of the sponsor shall not express preferences or seek to influence decisions concerning any candidate, political party, election issue, or voting decision.

(3) The sponsor shall not use grant funds in any activity for the purpose of influencing the passage or defeat of legislation or proposals by initiative petition, except:

(i) In any case in which a legislative body, a committee of a legislative body, or a member of a legislative body requests any volunteer in, or employee of such a program to draft, review or testify regarding measures or to make representation to such legislative body, committee or member; or

(ii) In connection with an authorization or appropriations measure directly affecting the operation of the RSVP Program.

(b) *Nondisplacement of employed workers.* A RSVP volunteer shall not perform any service or duty or engage in any activity which would otherwise be performed by an employed worker or which would supplant the hiring of or result in the displacement of employed workers, or impair existing contracts for service.

(c) *Compensation for service.* (1) An agency or organization to which NSSC volunteers are assigned, or which operates or supervises any NSSC program, shall not request or receive any compensation from NSSC volunteers or from beneficiaries for services of NSSC volunteers.

(2) This section does not prohibit a sponsor from soliciting and accepting voluntary contributions from the community at large to meet its local support obligations under the grant; or, from entering into agreements with parties other than beneficiaries to support additional volunteers beyond those supported by the Corporation grant.

(3) A RSVP volunteer station may contribute to the financial support of the RSVP Program. However, this support shall not be a required precondition for a potential station to obtain RSVP volunteers.

(4) If a volunteer station agrees to provide funds to support additional volunteers or pay for other volunteer support costs, the agreement shall be stated in a written Memorandum of Understanding. The sponsor shall withdraw services if the station's inability to provide monetary or in-kind support to the project under the Memorandum of Understanding diminishes or jeopardizes the project's financial capabilities to fulfill its obligations.

(5) Under no circumstances shall a RSVP volunteer receive a fee for service from service recipients, their legal guardian, members of their family, or friends.

(d) *Labor and anti-labor activity.* The sponsor shall not use grant funds directly or indirectly to finance labor or anti-labor organization or related activity.

(e) *Fair labor standards.* A sponsor that employs laborers and mechanics for construction, alteration, or repair of facilities shall pay wages at prevailing rates as determined by the Secretary of

Labor in accordance with the Davis-Bacon Act, as amended, 40 U.S.C. 276a.

(f) *Nondiscrimination.* A sponsor or sponsor employee shall not discriminate against a RSVP volunteer on the basis of race, color, national origin, sex, age, religion, or political affiliation, or on the basis of disability, if the volunteer with a disability is qualified to serve.

(g) *Religious activities.* A RSVP volunteer or a member of the project staff funded by the Corporation shall not give religious instruction, conduct worship services or engage in any form of proselytization as part of his/her duties.

(h) *Nepotism.* Persons selected for project staff positions shall not be related by blood or marriage to other project staff, sponsor staff or officers, or members of the sponsor Board of Directors, unless there is written concurrence from the Advisory Council or community group established by the sponsor under subpart B of this part, and with notification to the Corporation.

§ 2553.92 What legal coverage does the Corporation make available to RSVP volunteers?

It is within the Corporation's discretion to determine if Counsel is employed and counsel fees, court costs, bail and other expenses incidental to the defense of a RSVP volunteer are paid in a criminal, civil or administrative proceeding, when such a proceeding arises directly out of performance of the volunteer's activities. The circumstances under which the Corporation may pay such expenses are specified in 45 CFR part 1220.

Dated: March 15, 1999.

Thomas L. Bryant,

Acting General Counsel.

[FR Doc. 99–6632 Filed 3–23–99; 8:45 am]

BILLING CODE 6050–28–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 51 and 64

[CC Docket No. 95–20; FCC 99–36]

Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Report and Order released March 10, 1999 streamlines the Commission's Comparably Efficient Interconnection (CEI) and network information disclosure rules. The Report and Order frees the Bell Operating Companies (BOCs) from the requirement that they obtain pre-approval of their CEI plans and plan amendments from the Commission before initiating or altering an intraLATA information service. This change to the CEI rules will result in new information services being available to the public sooner. The Report and Order clarifies the network information disclosure rules, and relieves the interexchange carriers (IXCs) and competitive local exchange carriers (Competitive LECs) from these reporting requirements. As a result, these carriers will no longer perform a task the Commission has found to be unnecessary.

DATES: Effective April 23, 1999, except for §§ 51.325, 64.702, and Subpart G of Part 64, which contain information collection requirements which have not been approved by the Office of Management and Budget (OMB) and which will be effective June 2, 1999. Written comments by the public on the modified information collections are due April 23, 1999. Written comments must be submitted by OMB on the modified information collections on or before May 24, 1999.

FOR FURTHER INFORMATION CONTACT: Jonathan Reel, Attorney, Common Carrier Bureau, Policy and Program Planning Division, (202) 418–1580 or via the Internet at jreel@fcc.gov. Further information may also be obtained by calling the Common Carrier Bureau's TTY number: 202–418–0484. For additional information concerning the information collections contained in this Order contact Judy Boley at (202) 418–0214, or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order adopted February 24, 1999, and released March 3, 1999. This Report and Order contains new or modified information collections subject to the Paperwork Reduction Act of 1995 (PRA). It has been submitted to the Office of Management and Budget (OMB) for review under the PRA. OMB, the general public, and other federal agencies are invited to comment on the proposed information collections contained in this proceeding. The full text of this Report and Order is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, N.W., Washington, D.C. The complete text also may be obtained through the World Wide Web, at http://www.fcc.gov/Bureaus/Common Carrier/Orders/fcc9936.wp, or may be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 1231 20th St., N.W., Washington, D.C. 20036.

Regulatory Flexibility Certification: As required by the Regulatory Flexibility Act, the Report and Order contains a Final Regulatory Flexibility Analysis which is set forth in the Report and Order. A brief description of the analysis follows. The Report and Order removes the network information disclosure requirements from interexchange carriers and competitive local exchange carriers. These carriers are thus relieved of the burden associated with the requirements, and for that reason the Commission continues to foresee no significant economic impact on a substantial number of small entities.

Paperwork Reduction Act: This Report and Order contains either a new or modified information collection. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collections contained in this Order, as required by the Paperwork Reduction Act of 1995, Public Law No. 104–12. Written comments by the public on the information collections are due 30 days after date of publication in the **Federal Register**. OMB notification of action is due May 24, 1999. Comments should address: (a) whether the new or modified collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents including the use of automated collection techniques or other forms of information technology.

OMB Approval Number: 3060–0817.

Title: Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services, CC Docket No. 95–20.

Form No.: N/A.

Type of Review: Revised collection.

Information collection	No. of respondents (approx.)	Estimated time per response (house)	Total annual burden
Section 51.325	500	72	36,000

Total Annual Burden: 36,000 hours (no change in burden).

Respondents: Businesses or other for-profit.

Estimated costs per respondent: $0.

Needs and Uses: The Commission no longer requires Bell Operating Companies (BOCs) to file their Comparably Efficient Interconnection (CEI) plans with the Commission and to obtain pre-approval of CEI plans and amendments before initiating or altering an intraLATA information service. Instead, we require BOCs to post their CIE plans and plan amendments on their publicly accessible Internet sites linked to and searchable from the BOC's main Internet page, and to notify the Common Carrier Bureau of the posting. The Commission also extended the disclosure requirements in 47 CFR Section 51.325(a) to require incumbent LECs to provide public notice of any network changes that will affect the manner in which Customer Premises Equipment (CPE) is attached to the network. The requirements will be used to ensure that the affected carriers comply with Commission policies and regulations safeguarding against potential anticompetitive behavior in the provision of information services.

Synopsis of Order

I. Introduction

1. In the Telecommunications Act of 1996 (1996 Act), Congress directed the Commission to examine its rules every two years and repeal or modify those found to be no longer in the public interest. Consistent with the directive of Congress, in 1998 the Commission undertook a comprehensive biennial review of the Commission's rules to promote ''meaningful deregulation and streamlining where competition or other considerations warrant such action.''

2.In this Report and Order (*Order*) the Commission evaluates the utility of two of the regulatory safeguards we employ to prevent carriers that control local exchange and exchange access facilities from using their market power for anticompetitive purposes in the provision of intraLATA information services. The first safeguard we review is the requirement that Bell Operating Companies (BOCs) file service-specific Comparably Efficient Interconnection (CEI) plans, and obtain the Commission's approval of those plans, prior to initiating or altering their intraLATA information services. The other safeguards we review are the Commission's network information disclosure requirements, which seek to prevent anticompetitive behavior by ensuring that Information Service Providers (ISPs) and others have timely access to information affecting interconnection to the BOCs'', AT&T's, and other carriers' networks.

3. Our consideration of these two issues is part of a larger proceeding to reexamine issues relating to the safeguards applied primarily to the provision of information services by the BOCs. In January 1998, the Commission released a Further Notice of Proposed Rulemaking (*Further NPRM*) in the *Computer III* proceeding to reevaluate structural and nonstructural safeguards in light of recent developments, among them a remand from the United States Court of Appeals for the Ninth Circuit (*California III*), and the enactment of the 1996 Act. We also intended to repeal or modify any safeguards that we determine to be ''no longer necessary in the public interest.'' In the *Further NPRM*, the Commission sought to strike a reasonable balance between the goal of reducing and eliminating those regulatory requirements it could, and the recognition that certain safeguards may still be necessary.

4. We conclude that although the BOCs must continue to comply with their CEI obligations, they should no longer be required to file or obtain pre-approval of CEI plans and plan amendments before initiating or altering an intraLATA information service. Instead, we will require the BOCs to post their CEI plans and plan amendments on their publicly accessible Internet sites, and to notify the Common Carrier Bureau upon such posting. We also conclude that the network information disclosure rules set forth in the *Computer II* and *Computer III* proceedings have been effectively superseded by the disclosure rules that the Commission adopted pursuant to the 1996 Act, and we therefore eliminate those rules. We retain the *Computer II* network disclosure requirement that incumbent local exchange carriers (LECs) must disclose network changes that could affect the manner in which customer premises equipment (CPE) is attached to the interstate network.

5. This modification of our CEI rules should reduce substantially the burden of compliance with these requirements by the BOCs. By eliminating the need to obtain pre-approval of the BOCs' CEI plans, we remove the delay that has sometimes hampered the BOCs in their introduction of new intraLATA information services. Requiring the BOCs to post CEI plans on their publicly accessible Internet sites should not delay the introduction of innovative information services, because posting and service initiation may occur simultaneously. Also, by limiting the notification aspect of the requirement to a single-page letter stating the Internet address and path to the relevant CEI plan, the new procedure minimizes the administrative burden associated with the plans. Removing the CEI plan pre-approval process allows BOCs to bring new services to consumers sooner. At the same time, by requiring BOCs to post their CEI plans on the Internet, we ensure that the information which the BOCs' competitors still need will continue to be widely and conveniently available.

6. By removing the *Computer II* and *Computer III* network disclosure regimes, we reduce from three to one the sources to which an incumbent LEC must look to ascertain its disclosure obligations. All of the Commission's network disclosure obligations now reside together in sections 51.325–335 of our rules, which clarifies and streamlines the network disclosure regulation that remains. In addition, by eliminating the *Computer II* ''all carrier'' rule, we remove entirely the regulatory burden of network information disclosure obligations from both IXCs and competitive LECs. Instead, we rely on market forces to ensure network disclosure by those sectors of the telecommunications industry that we find to be subject to competitive pressures, and in which no carrier enjoys the degree of market power that could make anti-competitive nondisclosure appealing. The measures we adopt in this *Order* thus carry out the Commission's obligation to review our rules to determine whether they are no longer necessary in the public interest as a result of meaningful economic competition.

II. Comparably Efficient Interconnection Plan Requirements

A. Background

7. Since its *Computer I* proceeding, the Commission has adopted a variety of regulatory tools to prevent improper cost allocation and access discrimination against ESPs in the provision of enhanced services, both by the BOCs, and, before divestiture, by their predecessor in interest, AT&T. In the *Computer II* proceeding, the Commission required the then-integrated Bell System to establish structurally separate affiliates for the provision of enhanced services in order to address the concern over AT&T's incentive and ability to engage in anticompetitive activity. Following the divestiture of AT&T in 1984, the Commission extended the structural separation requirements of *Computer II* to the BOCs. In *Computer III*, the Commission determined that the costs of structural separation outweighed the benefits, and that nonstructural safeguards could protect competitive ESPs from improper cost allocation and discrimination by the BOCs while avoiding the inefficiencies associated with structural separation.

8. Under *Computer III* and our Open Network Architecture rules, the BOCs are permitted to provide enhanced services on an integrated basis through the regulated entity, subject to certain nonstructural safeguards. One of the safeguards the Commission instituted in the *Computer III* decision requires the BOCs to obtain Commission approval of, and to comply with, a service-specific Comparably Efficient Interconnection (CEI) plan in order to offer a new enhanced service. In these CEI plans, the BOC must explain how it would offer to competitive ESPs, on a non-discriminatory basis, all the underlying basic services that the BOC uses to provide its own enhanced service offering. The Commission indicated that such a CEI requirement, itself a form of interconnection making basic network facilities and services available to the public.

9. The Commission in 1998 released a *Further NPRM* to reexamine the issues of structural and nonstructural safeguards in light of further developments. We observed in the *Further NPRM* that the BOCs remain the dominant providers of local exchange and exchange access services in their in-region states, and thus continue to have the ability to engage in anticompetitive behavior against competitive ISPs. The Commission also acknowledged that Congress recognized, in passing the 1996 Act, that competition will not immediately supplant monopolies. In addition, we noted that Congress required the Commission to conduct a biennial review of regulations that apply to operations or activities of any provider of telecommunications service, and to repeal or modify any regulation we determine to be ''no longer necessary in the public interest.''

10. In the *Further NPRM*, the Commission tentatively concluded that we should eliminate the requirement that BOCs file CEI plans and obtain Commission approval for those plans prior to providing new intraLATA information services. Given the protection afforded by the Commission's ONA requirements and the 1996 Act, we tentatively concluded that the administrative costs associated with BOC preparation and agency review of CEI plans outweighed their utility as an additional safeguard against access discrimination, and that the preparation and review of CEI plans could delay the introduction of new information services by the BOCs, without commensurate regulatory benefits. Finding that the burden imposed by these requirements outweighed their benefit as additional safeguards against access discrimination, we tentatively concluded that we should eliminate the requirement that BOCs file CEI plans, and obtain Bureau approval for those plans, prior to providing new information services. We also tentatively concluded that lifting the CEI plan filing requirement would further our statutory obligation to review and eliminate regulations that are ''no longer necessary in the public interest.'' We sought comment on these tentative conclusions and our supporting analysis.

B. Discussion

1. Introduction

11. We believe that compliance with the Commission's CEI requirements remains conducive to the operation of a fair and competitive market for information services. Based on the record before us in this proceeding, and as we discuss below, we conclude that the BOCs' CEI plans have continuing importance in that they provide non-BOC ISPs with helpful information regarding their interconnection rights, options, and methods. These plans thus ensure that non-BOC ISPs have access to the underlying basic services that the BOCs use for their own information service offerings, access which enables those non-BOC ISPs to provide competitive offerings. We find that neither the protection afforded by ONA nor the effect of the 1996 Act has yet rendered the CEI plans superfluous as an effective means of making this information available and of promoting BOC compliance with their interconnection obligations. For these reasons, we do not at this time eliminate the requirement that BOCs publicly disclose in a written document how they will comply with the Commission's CEI parameters.

12. We further conclude, however, that, although the BOCs must continue to prepare CEI plans, we should no longer require BOCs to file their CEI plans with the Commission, or obtain the Commission's approval of these plans, before initiating a new or changing an existing intraLATA information service. We conclude that the chief burdens associated with the CEI requirements—the administrative burden associated with filing the plans, and the delay in the introduction of new services—can be eliminated without compromising the efficient dissemination of the information contained in the BOC CEI plans. We eliminate the requirement that BOCs file with the Commission and obtain from the Commission approval of their CEI plans. In its place, we require the BOCs to post on their publicly accessible Internet page, linked to and searchable from the BOC's main Internet page, their CEI plan for any new or altered intraLATA information service offering, and to notify the Common Carrier Bureau at the time of the posting.

2. Benefits of Public Disclosure of CEI Compliance

13. From the nine parameters of a BOC's CEI plan, an ISP can obtain detailed information regarding the following: Interface Functionality; Unbundling of Basic Services; Resale; Technical Characteristics; Installation, Maintenance, and Repair; End User Access; CEI Availability; Minimization of Transport Costs; Availability to All Interested ISPs.

14. We agree with non-BOC ISPs and other commenters that CEI plans provide useful information that is either not available, or not available in as much detail, from other sources. Moreover, we conclude that the BOCs' CEI plans present this information in a more usable form than is otherwise available to ISPs. The nine parameters of a CEI plan unite in a single document the disparate pieces of information that a BOC makes available to its competitors through other avenues. Such a collection of information in a single CEI plan is significantly useful to competitive ISPs. In addition, CEI plans describe the availability of comparable interconnection to *services*, as distinct

from the building-block *elements* of services described in ONA filings, and so provide competitive ISPs with a different and frequently more appropriate level of access to the public switched network.

15. Also, based on these circumstances, we do not believe that our progress in implementing the 1996 Act has reduced the threat of discrimination sufficiently to warrant removal of these additional safeguards at this time.

16. Posting CEI plans on their publicly accessible Internet sites should not hamper the BOCs in their introduction of innovative information services, because posting and service initiation may occur simultaneously. The substance of notification to the Bureau may be limited to the Internet address and path to the relevant CEI plan or amended plan; the form may consist of a letter to the Secretary with a copy to the Bureau.

3. Elimination of Filing and Pre-approval of CEI Plans

17. Based on the record before us, we conclude that the CEI plan filing and pre-approval process has significant disadvantages without commensurate advancement of our regulatory goal of ensuring fair and equal interconnection.

4. CEI Plans for Telemessaging, Alarm Monitoring, and Payphone Services

a. Section 260 Telemessaging and Section 275 Alarm Monitoring Services

18. In the *Telemessaging and Electronic Publishing Order,* 62 FR 7690, February 20, 1997, and the *Alarm Monitoring Order,* 62 FR 16093, April 4, 1997, respectively, the Commission concluded that the *Computer II, Computer III,* and ONA requirements continue to govern the BOCs' provision of intraLATA telemessaging services and alarm monitoring services.

19. For the same reasons we lift the CEI filing and pre-approval requirement for other intraLATA information services provided by the BOCs on an integrated basis, we also lift the requirement for section 260 telemessaging and section 275 alarm monitoring services. We also require the BOCs to post on their Internet sites CEI plans for new or modified telemessaging or alarm monitoring services, and to notify the Bureau of the posting. As with other BOC intraLATA information services, we believe this approach minimizes a BOC's administrative burden, and eliminates regulatory delay; provides competitive ISPs with essential information; promotes the Commission's ability to monitor and enforce BOC access and interconnection obligations; and appropriately acknowledges the degree that competitive providers of telemessaging and alarm monitoring services must still depend on the basic services of the incumbent LEC—usually a BOC—for access to their customers.

b. Section 276 Payphone Services

20. In the *Further NPRM,* we noted that section 276 directs the Commission to prescribe a set of nonstructural safeguards for BOC provision of payphone services that must include, at a minimum, ''nonstructural safeguards equal to those adopted in the Computer Inquiry-III (CC Docket No. 90–623) proceeding.'' In implementing section 276, the Commission required the BOCs, among other things, to file CEI plans describing how they would comply with various nonstructural safeguards. The Bureau approved the BOCs' CEI plans to provide payphone service on April 15, 1997. In the *Further NPRM,* we sought comment regarding whether to relieve the BOCs from the requirement of filing amendments to their CEI plans for payphone services, and how such a step would comport with the statutory requirement in section 276.

21. We now conclude that the BOCs should not be required to file or obtain approval of CEI plans for new payphone services or for amendments to their existing payphone plans. As with other applications of CEI, we find that the benefits of CEI plans may be largely preserved by instead requiring the BOCs to post on their Internet pages CEI plans for new or amended payphone services. Consistent with our application of CEI to intraLATA information services that BOCs provide on an integrated basis, we believe that, under current market conditions, such posting disseminates valuable interconnection information, and facilitates our enforcement of BOC interconnection responsibilities, at minimum cost to the BOCs.

5. IntraLATA Information Services Provided Through 272 and 274 Affiliates

a. Background

22. In the *Further NPRM,* we observed that, under our current rules, a BOC may provide an intraLATA information service either on an integrated basis pursuant to an approved CEI plan, or on a structurally separate basis pursuant to the Commission's *Computer II* rules. We noted that, in addition to the factors cited by the Commission in the *Computer III Phase I Order,* 51 FR 24350, July 3, 1986, the advent of the 1996 Act may affect our analysis of the relative costs and benefits of structural and nonstructural safeguards. In this context, we noted that the Act's local competition provisions should in time provide for alternate sources of access to basic services, thereby diminishing the BOCs' ability to engage in anticompetitive behavior against competitive ISPs.

23. *Section 272 Separate Affiliates.* In the *Non-Accounting Safeguards Order,* 62 FR 2927, January 21, 1997, the Commission noted that section 272 of the Act imposes specific separate affiliate and nondiscrimination requirements on BOC provision of interLATA information services, but that section 272 does not address BOC provision of intraLATA information services. We concluded that, pending the conclusion of the *Computer III Further Remand* proceeding, BOCs may continue to provide intraLATA information services on an integrated basis, in compliance with the Commission's nonstructural safeguards—including CEI—established in the Computer III and ONA proceedings. In the *Further NPRM,* however, we tentatively concluded that the BOCs should not have to file CEI plans for any information services they offer through section 272 separate affiliates, notwithstanding that section 272's requirements are not identical to the Commission's *Computer II* requirements. We also reasoned that our concern regarding access discrimination would be sufficiently addressed by requirements set forth in section 272 and the Commission's orders implementing that section.

24. *Section 274 Electronic Publishing.* In the *Telemessaging and Electronic Publishing Order,* the Commission concluded that our *Computer II, Computer III,* and ONA requirements continue to govern the BOCs' provision of intraLATA electronic publishing services.

25. In the *Further NPRM,* we tentatively concluded that, just as BOCs should not be required to file CEI plans for intraLATA information services they provide through a section 272 affiliate, so too the requirement should be lifted for electronic publishing services or other information services that BOCs provide through a section 274 affiliate.

b. Discussion

26. In this *Order,* we adopt our tentative conclusion that BOCs should not be required either to file or to obtain pre-approval of CEI plans for information services that are offered through section 272 or section 274 separate affiliates. The reasons that persuade us to eliminate the CEI filing

and approval process in the context of intraLATA information services that a BOC offers on an integrated basis —reduction of administrative burden and elimination of delay—apply with at least equal force to the intraLATA services that a BOC chooses to offer through a section 272 or section 274 separate affiliate. The requirements Congress set forth in sections 272 and 274 substantially reduce our concern regarding access discrimination, so there is even less reason to delay the introduction of an intraLATA information service pending our review of a CEI plan. That the pre-approval process might also delay the introduction of combined intra-and interLATA integrated information services is a further reason to eliminate the requirement.

27. Moreover, Congress has instructed us to repeal or modify any regulation we determine to be ''no longer necessary in the public interest.'' That Congress itself has addressed in sections 272 and 274 concerns over discriminatory interconnection and misallocation of funds makes pre-Act regulation by the Commission targeted to the same concerns the object of our special scrutiny. Because we believe that structural separation protects against discriminatory interconnection better than do nonstructural safeguards such as CEI, we see no reason at this time to impose on the BOCs even the relatively light burden of posting CEI plans on the Internet for intraLATA information services they provide through a separate subsidiary. Accordingly, we will no longer require the BOCs to formulate CEI plans before initiating or altering any intraLATA information service offered through a section 272 or 274 affiliate.

6. Pending CEI Matters

a. Background

28. In the *Further NPRM,* we sought comment on whether, if we adopted our tentative conclusion to eliminate the CEI plan filing requirement for the BOCs, we should also dismiss as moot all pending CEI matters, including approval of pending CEI plans, pending CEI plan amendments, and requests for CEI plan waivers, on the condition that the BOCs must comply with any new or modified rules that we might establish.

b. Discussion

29. We now believe that the Commission's section 208 enforcement process is far better suited than the CEI plan pre-approval process to addressing the complex and highly fact-specific issues that arise in certain CEI plans. In certain instances these issues fall outside the scope of the nine CEI parameters. The section 208, formal complaint process is set up to conduct the fact-finding, arbitration, and adjudication necessary to resolve CEI-related disputes. Moreover, through use of the Commission's Accelerated Docket or revised complaint procedures, parties would have swifter resolution and closure of their CEI-related disputes. For these reasons, we are confident that all parties, BOCs and non-BOCs, will be better served by the information-and enforcement-based system we adopt today, and we dismiss all pending requests for approval of CEI plans and CEI plan amendments.

30. We also dismiss without prejudice any pending petitions for reconsideration or applications for review of orders approving CEI plans. We believe that these complicated, fact-specific issues may be more appropriately and more quickly resolved in the enforcement setting than in the context of a CEI plan. Accordingly, parties affected by such ancillary issues may file section 208 formal complaints with the Commission. Should they file such a complaint, those parties with previously pending challenges to CEI plans may, as appropriate, rely on their already existing record, rather than developing a factual record through the procedures normally applicable to formal complaints.

III. Network Information Disclosure Requirements

A. Background

31. In the *Further NPRM,* we addressed the Commission's network information disclosure rules. These rules seek to prevent anticompetitive behavior by ensuring that ISPs and others have timely access to information affecting interconnection to the BOCs', AT&T's, and other carriers' networks. Prior to the 1996 Act, the rules established in the Commission's *Computer II* and *Computer III* proceedings governed the disclosure of network information. Section 251(c)(5) of the Act requires incumbent LECs to ''provide reasonable public notice of changes in the information necessary for the transmission and routing of services using that local exchange carrier's facilities or networks, as well as of any other changes that would affect the interoperability of those facilities or networks.'' In the *Local Competition Second Report and Order,* 61 FR 47284, September 6, 1996, the Commission adopted network information disclosure requirements to implement section 251(c)(5). Although we discussed our existing network information disclosure requirements in conjunction with the requirements of section 251(c)(5) in the *Local Competition Second Report and Order,* we did not address in that proceeding whether our *Computer II* and *Computer III* network information disclosure requirements should continue to apply independent of our section 251(c)(5) network information disclosure requirements. In the *Further NPRM,* we sought comment on the extent to which the Commission should retain the network information disclosure rules established in the *Computer II* and *Computer III* proceedings in light of the disclosure requirements stemming from section 251(c)(5) of the 1996 Act.

1. *Computer II* Network Disclosure Rules

32. The *Computer II* network information disclosure rules consist of two requirements: one, termed ''the separate subsidiary rule,'' that depends on the existence of a *Computer II* separate subsidiary; and another, termed ''the all carrier rule,'' that applies to all carriers owning basic transmission facilities, independent of whether the carrier has a separate subsidiary. The separate subsidiary network disclosure requirement obligates the BOCs to disclose ''at a minimum, * * * any network information which is necessary to enable all [information] service * * * vendors to gain access to and utilize and to interact effectively with [the BOCs'] network services or capabilities, to the same extent that [the BOCs' *Computer II* separate affiliate] is able to use and interact with those network services or capabilities.'' In addition to technical information, the information required includes marketing information, such as ''commitments of the carrier with respect to the timing of introduction, pricing, and geographic availability of new network services or capabilities.'' The other component of the *Computer II* network disclosure rules, the all carrier rule, encompasses ''all information relating to network design * * * which would affect either intercarrier interconnection or the manner in which customer premises equipment is attached to the interstate network. * * *''

33. In the *Further NPRM,* we tentatively concluded that both *Computer II* network disclosure requirements should continue to apply—specifically, that the separate affiliate disclosure rule should continue to apply to BOCs that operate a Computer II subsidiary, and that the all carrier rule should continue to apply to

all carriers owning basic transmission facilities. We reasoned that the *Computer II* separate subsidiary disclosure rule should continue to apply to the BOCs because the rule encompasses some information, such as marketing information, which falls outside the scope of section 251(c)(5), and because the rule requires disclosure under a more stringent timetable than that required under section 251(c)(5). We based our tentative conclusion that the all carrier rule should be retained on two factors: first, that the rule requires carriers to disclose network changes that affect CPE, whereas our section 251(c)(5) rules require carriers to disclose only information that affects competitive service providers; and second, that the rule applies to all carriers, whereas section 251(c)(5) applies only to incumbent LECs.

2. Computer III Network Disclosure

34. The *Computer III* network information disclosure rules initially were imposed on AT&T and the BOCs in the *Phase I Order* and *Phase II Order,* 52 FR 20714, June 3, 1987. The Commission later extended the *Computer III* network information disclosure rules and other nondiscrimination safeguards to GTE in the *GTE ONA Order.* Under *Computer III,* the scope of network information that carriers must disclose is adopted from, and identical to, the *Computer II* requirements.

35. In the *Further NPRM,* we tentatively concluded that the network information disclosure rules for incumbent LECs that the Commission established pursuant to section 251(c)(5) should supersede the disclosure rules established in *Computer III.* We explained that, in our view, the 1996 Act disclosure rules for incumbent LECs are as comprehensive, if not more so, than the *Computer III* disclosure rules. We invited parties who disagreed to explain why, in light of the section 251(c)(5) rules, all or some aspects of the *Computer III* disclosure rules might still be needed.

3. Section 251(c)(5) Network Disclosure Rules

36. The Commission promulgated the rules implementing the section 251(c)(5) network disclosure requirements in the *Local Competition Second Report and Order.* The section 251(c)(5) network disclosure requirements apply to all incumbent LECs, as the term is defined in section 251(h) of the Act.

B. Discussion

37. We adopt our tentative conclusion that the network disclosure rules adopted pursuant to section 251(c)(5) supersede the *Computer III* disclosure rules. In addition, we remove the *Computer II* network disclosure rules that affect BOCs providing information services through a *Computer II* separate subsidiary. Finally, we eliminate the *Computer II* all carrier rule, but we preserve in our section 51 rules the requirement that incumbent LECs must disclose network changes that could affect the manner in which CPE is attached to the interstate network.

1. Computer III Network Disclosure Rules

38. We conclude that we should eliminate the *Computer III* network disclosure rules. We agree with comments that the section 251(c)(5) rules have rendered the *Computer III* network disclosure rules redundant.

2. Computer II Network Disclosure Rules

39. In the *Further NPRM* we identified two *Computer II* requirements that exceed the rules adopted pursuant to section 251(c)(5), the separate subsidiary rule and the all carrier rule. We address the separate subsidiary rule first.

a. The Separate Subsidiary Rule

40. In the *Further NPRM,* we recognized that some BOCs may be providing certain intraLATA information services through a *Computer II* subsidiary, rather than on an integrated basis under the Commission's *Computer III* rules. We tentatively concluded that the *Computer II* separate subsidiary disclosure rule should continue to apply in such cases. We conclude that maintaining the *Computer II* separate subsidiary network information disclosure rules is no longer necessary. We believe that the protection from discriminatory interconnection afforded by structural separation generally exceeds that provided by non-structural safeguards alone. It follows that a BOC that uses a *Computer II* separate affiliate should not be subject to more stringent network disclosure obligations than a BOC that offers such services on an integrated basis under the Commission's *Computer III* rules. Moreover, Congress has instructed us to repeal or modify any regulation we determine to be ''no longer necessary in the public interest.'' Because we find that it is no longer necessary to retain the separate subsidiary disclosure rule, we remove it.

b. The All Carrier Rule

41. We conclude that disclosure of network information by carriers other than incumbent LECs is ''no longer necessary in the public interest as a result of meaningful competition between providers. * * *'' Because no single carrier now dominates the interexchange market, no interexchange carrier (IXC) has the incentive or the ability to gain an unfair advantage by withholding network information from ISPs. We also find that no new entrants into the local exchange market possess individual market power. Because IXCs and competitive LECs currently lack individual market power, they also lack the incentive to create incompatible network interfaces for existing services in order to leverage that power into upstream or downstream markets.

42. We conclude that, in contrast to the incumbent LECs, the IXCs and competitive LECs are not likely to gain the individual market power that would allow them profitably to withhold information necessary for interconnection to their networks in order to increase market power in upstream or downstream markets. Thus, we find that regulatory intervention to ensure network information disclosure is no longer needed for all carriers, but only for incumbent LECs, whose duty to disclose network changes that will affect other service providers is already defined by the section 251(c)(5) network disclosure rules. This conclusion comports with our statutory obligation to eliminate regulations that are no longer necessary due to meaningful economic competition among providers.

43. Although we relieve IXCs and competitive LECs from the specific, routine network information disclosure obligations previously required under the all carrier rule, we emphasize that the Communications Act imposes certain nondiscrimination requirements on all common carriers providing interstate communication services. Among them, section 201 provides that all common carriers have a duty ''to establish physical connections with other carriers,'' and to furnish telecommunications services ''upon reasonable request therefor.'' We conclude in this proceeding that, if a carrier fails to disclose network information that enables other entities to interconnect to the carrier's basic telecommunications facilities and services in a just and reasonable manner, such action would violate section 201 of the Act. Moreover, all common carriers remain subject to the nondiscrimination requirements in section 202 of the Act. The Commission will not hesitate to use its enforcement authority to determine whether any carrier's network information disclosure practices are unjust or unreasonable.

44. We further conclude that the *Computer II* network information disclosure rules that extend disclosure requirements to CPE should be retained, but that their application should be limited to incumbent LECs only. The primary purpose of network information disclosure in this context is not to protect intercarrier interconnection, but rather to give competitive manufacturers of CPE adequate advance notice when a carrier intends to alter its network in a way that may affect the manner in which CPE is attached to the network. Our concern has been that to the extent that a company with control over underlying transmission facilities also manufactures CPE, that company may have the incentive and ability to leverage its control of those facilities to favor its affiliate's CPE over that of competitive manufacturers. We note that section 201 interconnection and section 202 nondiscrimination obligations also apply in the context of CPE. We conclude that failure to disclose network changes that affect CPE could give incumbent LECs a significant head start in providing fully compatible equipment, and could thereby adversely affect competition in the CPE market.

45. Although we find it necessary to retain a network information disclosure requirement that extends incumbent LECs' disclosure obligations to CPE, we see no point in subjecting incumbent LECs to two separate sets of network information disclosure rules, each with its own timing, triggering, and notice requirements. Instead, we simplify our disclosure requirements to the extent feasible. We therefore remove from our rules the *Computer II* all carrier requirement, and instead extend the disclosure requirements in section 51.325(a) of our rules to require incumbent LECs to provide public notice of any network changes that will affect the manner in which CPE is attached to the network. By amending section 51.325(a) of our rules to include a CPE disclosure requirement to, we continue to require incumbent LECs to disclose that information.

IV. Procedural Matters

A. Final Regulatory Flexibility Certification

46. This regulatory flexibility certification supplements our prior certifications and analyses in this proceeding. The Regulatory Flexibility Act (RFA) requires that a regulatory flexibility analysis be prepared for notice-and-comment rulemaking proceedings, unless the agency certifies that ''the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.'' The RFA generally defines ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). The SBA defines small businesses under the category ''Telephone Communications, Except Radiotelephone,'' to be those employing no more than 1,500 persons.

47. The Commission, in the previous *Further Notice of Proposed Rulemaking* (*Further NPRM*) in this proceeding, stated in the Initial Regulatory Flexibility Certification that the *Further NPRM* pertained to Bell Operating Companies (BOCs), each of which is an affiliate of a Regional Holding Company (RHC), as well as to GTE and AT&T. Because each BOC is dominant in its field of operations and all of the BOCs as well as GTE and AT&T have more than 1,500 employees, we previously certified that the proposed action would not have a significant economic impact on a substantial number of small entities. No commenter addressed this previous certification. Subsequently, however, it has became clear that the changes to the Commission's network information disclosure requirements will also affect IXCs and competitive LECs, because the present *Report and Order* removes the network information disclosure requirements from interexchange carriers (IXCs) and competitive local exchange carriers (LECs). At present, because these additional carriers are relieved of any burden associated with the requirements, we continue to foresee no significant economic impact on a substantial number of small entities, and therefore so certify regarding the rules adopted. In addition, this removal of regulation produces no reporting, recordkeeping, or other compliance requirement.

48. The Commission will send a copy of the *Report and Order,* including a copy of this final certification, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996. In addition, the *Report and Order* and this certification will be sent to the Chief Counsel for Advocacy of the Small Business Administration. Finally, the *Report and Order* (or summary thereof) and certification will be published in the **Federal Register**.

V. Ordering Clauses

49. Accordingly, it is ordered that, pursuant to the authority contained in sections 1, 2, 4, 11, 201–205, 208, 251, 260, and 271–276, of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154, 161, 201–205, 208, 251, 260, and 271–276, that the policies, rules, and requirements set forth herein are adopted, and that parts 51 and 64 of the Commission's rules, 47 CFR Parts 51 and 64, are amended as set forth in Rule Changes.

50. It is further ordered that, pursuant to 5 U.S.C. 553(d), the rules, requirements, and amendments set forth herein shall take effect 30 days after the publication of this Report and Order in the **Federal Register**, except for the amendments to parts 51 and 64 of the Commission's rules, 47 CFR parts 51 and 64, as set forth in Rule Changes, which, pursuant to 44 U.S.C. 3507(c), shall take effect 70 days after the publication of this Report and Order in the **Federal Register**.

51. It is further ordered that, pursuant to the authority contained in sections 1, 2, 4, and 201–204, of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154, and 201–204, the pending requests for approval of CEI plans and CEI plan amendments listed in Attachment A are dismissed.

52. It is further ordered that, pursuant to the authority contained in sections 1, 2, 4, and 201–204, of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154, and 201–204, the pending petitions for reconsideration or applications for review of orders approving CEI plans listed in Attachment B are dismissed without prejudice.

53. It is further ordered that the Commission's Office of Public Affairs, Reference Operations Division, shall send a copy of this Report and Order, including the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with the Regulatory Flexibility Act, *see* 5 U.S.C. 605(b).

List of Subjects

47 CFR Part 51

Communications common carriers, Telecommunications.

47 CFR Part 64

Communications common carriers, Reporting and recordkeeping requirements, Telephone.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Attachment A—Pending Requests for Approval of CEI Plans or Amendments

1. Ameritech CEI Plan for Enhanced Services. DA 95–553. Plan filed March 13, 1995.
2. Bell Atlantic Amendment to CEI Plan for Internet Access Service. CCBPol 96–09. Amendment filed May 5, 1997.
3. Southwestern Bell Telephone Company CEI Plan for Internet Support Services. CCBPol 97–05. Plan filed May 22, 1997.
4. US West CEI Plan for Alarm Monitoring. CCBPol 98–02. Plan filed April 24, 1998.
5. BellSouth CEI Plan for Alarm Monitoring. CCBPol 98–03. Plan filed June 12, 1998.

Attachment B—Pending Petitions for Reconsideration or Applications for Review of Orders Approving CEI Plans

1. Reconsideration of Bell Atlantic Internet Access CEI Plan. CCBPol 96–9. Petition for Reconsideration filed July 3, 1996.
2. Applications for Review of Payphone CEI Orders. CC Docket No. 96–28. Applications for Review filed May 5, 1997.

Rule Changes

For the reasons discussed in the Preamble, the Federal Communications Commission amends 47 CFR parts 51 and 64 as follows:

PART 51—INTERCONNECTION

1. The authority citation for part 51 continues to read as follows:

Authority: Sections 1–5, 7, 201–05, 207–09, 218, 225–27, 251–54, 271, 332, 48 Stat. 1070, as amended, 1077; 47 U.S.C. 151–55, 157, 201–05, 207–09, 218, 225–27, 251–54, 271, 332, unless otherwise noted.

2. Section 51.325(a) is amended by revising paragraphs (a)(1) and (a)(2) and adding a new paragraph (a)(3):

§ 51.325 Notice of network changes; Public notice requirement.

(a) * * *

(1) Will affect a competing service provider's performance or ability to provide service;

(2) Will affect the incumbent LEC's interoperability with other service providers; or

(3) Will affect the manner in which customer premises equipment is attached to the interstate network.

* * * * *

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

3. The authority for part 64 continues to read as follows:

Authority: 47 U.S.C. 154, 254(k); secs. 403(b)(2)(B), (c), Pub. L. 104–104, 110 Stat. 56. Interpret or apply 47 U.S.C. secs 201, 218, 226, 228, and 254(k) unless otherwise noted.

Subpart G of Part 64—[Amended]

§ 64.702 [Amended]

4. In the title of Subpart G of Part 64 and in paragraph (b) of § 64.702 remove the words ''Communications Common Carriers'' and add, in their place, the words ''Bell Operating Companies.''

5. In § 64.702, in paragraph (c), remove the words ''Communications Common Carrier'' and add, in their place, the words ''Bell Operating Company,'' and revise the last sentence of paragraph (d)(2) to read as follows:

§ 64.702 Furnishing of enhanced services and customer-premises equipment.

* * * * *

(d) * * *

(2) * * * Such information shall be disclosed in compliance with the procedures set forth in 47 CFR 51.325 through 51.335.

* * * * *

[FR Doc. 99–6726 Filed 3–23–99; 8:45 am]

BILLING CODE 6712–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 1822

Designation of Contracts for Notification to the Government of Actual or Potential Labor Disputes

AGENCY: Office of Procurement, Contract Management Division, National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: This rule amends the NASA Federal Acquisition Regulation Supplement (NFS) to designate all NASA contracts in excess of the simplified acquisition threshold as requiring notification to the Government of actual or potential labor disputes that are delaying or threaten to delay timely contract performance.

EFFECTIVE DATE: March 24, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph Le Cren, Telephone: (202) 358–0444, e-mail: joseph.lecren@hq.nasa.gov.

SUPPLEMENTARY INFORMATION:

Background

FAR 22.101–1(e) permits the head of the contracting activity to designate programs or requirements requiring notifying the Government of actual or potential labor disputes that are delaying or threaten to delay timely contract performance. Contracts resulting from those programs or requirements are to include the clause at FAR 52.222–1, Notice to the Government of Labor Disputes. NASA believes it is appropriate, in order to establish consistent application across the agency, to designate the contracts in which the requirement for contractor notification shall be included. NASA has selected the notification requirement to be included in all contracts in excess of the simplified acquisition threshold to ensure that it is made aware of labor disputes which could adversely impact critical mission needs.

Impact

Regulatory Flexibility Act

This final rule does not constitute a significant revision within the meaning of FAR 1.501 and Pub. L. 98–577, and publication for public comments is not required. However, comments from small entities concerning the affected NFS subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.*

Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the NFS do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 1822

Government procurement.

Tom Luedtke,

Acting Associate Administrator for Procurement.

Accordingly, 48 CFR Part 1822 is amended as follows:

1. The authority citation for 48 CFR Part 1822 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

PART 1822—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

1822.101–1 [Amended]

2. In section 1822.101–1, paragraph (e) is added to read as follows:

1822.101–1 General. (NASA supplements paragraphs (d) and (e))

* * * * *

(e) Programs or requirements that result in contracts in excess of the simplified acquisition threshold shall require contractors to notify NASA of actual or potential labor disputes that are delaying or threaten to delay timely contract performance.

3. Section 1822.103–5 is added to read as follows:

1822.103–5 Contract clauses. (NASA supplements paragraph (a))

(a) See 1822.101–1(e).

[FR Doc. 99–7205 Filed 3–23–99; 8:45 am]

BILLING CODE 7510–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Parts 25 and 36

RIN 1018–AE21

Regulations for Administrative and Visitor Facility Sites on National Wildlife Refuges in Alaska

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This rule amends current regulations and provides us with proper authority to enforce regulations concerning public safety, protection of government property, and applicable State of Alaska fish and wildlife regulations on administrative and visitor facility sites commonly located outside the approved boundaries of national wildlife refuges in Alaska.

DATES: This rule is effective April 23, 1999.

ADDRESSES: U.S. Fish and Wildlife Service, Attention: George Constantino, 1011 E. Tudor Road, Anchorage, Alaska 99503.

FOR FURTHER INFORMATION CONTACT: George Constantino; telephone (907) 786–3557.

SUPPLEMENTARY INFORMATION:

Background

The National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd–668ee) as amended and Section 1306 of the Alaska National Interest Lands Conservation Act of 1980 (ANILCA) (16 U.S.C. 3196) authorize the Secretary of the Interior to establish administrative sites and visitor facilities outside the boundaries of, and in the vicinity of, refuge units and to prescribe regulations governing use of such acquired lands.

We originally published the current regulations governing use on units of the National Wildlife Refuge System in Alaska, codified at 50 CFR part 36, in the **Federal Register** on June 17, 1981 (46 FR 31827, as corrected at 46 FR 40194, August 7, 1981), and amended them in 1986 (51 FR 44793, December 12, 1986). The existing regulations in part 36 are applicable only on federally-owned lands within the approved boundaries of Alaska National Wildlife Refuges. We currently have administrative and visitor facility sites that are both inside and outside the approved boundaries of refuges, some of which are held in less than fee title. Examples of visitor facility sites include Alaska Maritime Refuge's Visitor Center and Headquarters Complex (fee title land) in Homer; Tetlin Refuge's two campgrounds (leased from the State of Alaska) near Northway; and Kenai Refuge's ''Sportsmen's Lodge'' access and parking area (leased from the State of Alaska and Memorandum of Understanding with the U.S. Forest Service) on the Kenai River at the Russian River confluence near Cooper Landing. Refuge officers currently do not have full authority to enforce applicable Federal and State regulations at visitor facility locations such as those noted above and other administrative sites, including refuge staff offices and residences. The primary purpose of these regulations is to provide us with the proper regulatory authority to enforce regulations concerning public safety, protection of United States government property, and State of Alaska fish and resident wildlife statutes on administrative and visitor facility sites of national wildlife refuges in Alaska.

Analysis of Public Comments and Changes Made to the Proposed Rule

We received two written comments on the proposed rule; one from the general public and one from the State of Alaska's Division of Governmental Coordination (Division). The comment from the member of the general public opposed the regulations and stated that we ''should not have the ability to enforce State Fish and Game regulations anywhere and existing authority, if any, should be curtailed not increased.'' The Division's comments requested that we not promulgate these regulations as they are unnecessary. Their opposition focused primarily on the fact that the Service and the Alaska Department of Public Safety were currently in the process of renegotiating a Memorandum of Agreement for cooperative law enforcement. The draft agreement provided a delegation of State authority to specified Service refuge officers to enforce State criminal, motor vehicle, and public safety laws and regulations on lands leased or owned by us, or in situations involving an immediate threat to public safety. The Division contended that the completed Memorandum of Agreement would resolve our gap in authority without expanding the Federal regulatory presence on these lands.

Both parties have now signed the final Memorandum of Agreement. The agreement does partially address our needs by including a provision which allows delegation of refuge officers as State authorities for the conservation of wildlife and natural resources as well as for public safety. However, according to the agreement, only refuge officers ''whose principal duty is the enforcement of conservation laws . . .'' receive delegated State authority. The State delegation of authority greatly expands a refuge officer's authority on all lands within the boundary of the State of Alaska. Both parties understood while developing the agreement that only a very limited number of refuge officers would receive State authority, and the State would approve individuals on a case-by-case basis. It was not the intent of the agreement to grant State cross-deputization with an associated broad expansion of authorities to all refuge officers in order to resolve our need for a limited expansion of authority for refuge officers at refuge administrative and visitor facility sites.

The State also had concerns whether the scope of the regulations would include access areas such as Alaska Native Claims Settlement Act (ANCSA) 17(b) easements or would affect the Alaska National Interest Lands Conservation Act (ANILCA) Title VIII subsistence issues.

After considering the foregoing comments, we need this regulation to provide all refuge officers with the proper authority to enforce regulations concerning public safety, protection of government property, and applicable State of Alaska fish and wildlife regulations on refuge administrative and visitor facility sites. In response to the State's concerns, we have amended the language to clarify that the scope of the regulation does not include ANCSA 17(b) easements. The regulation does not affect ANILCA Title VIII issues.

Required Determinations

Regulatory Planning and Review (E.O. 12866)

This document is not a significant rule subject to Office of Management and Budget review under Executive Order 12866.

1. This rule will not have an effect of $100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.

This action is of an administrative nature only, and places no new economic or regulatory burden on the visiting public.

2. This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. See explanation under Regulatory Flexibility Act.

3. This rule does not alter the budgetary effects or entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients. See explanation under Regulatory Flexibility Act.

4. This rule does not raise novel legal or policy issues. See explanation under Regulatory Flexibility Act.

Regulatory Flexibility Act

The primary purpose of these revised regulations is to provide us with the proper regulatory authority to enforce regulations concerning public safety, protection of United States government property, and State of Alaska fish and resident wildlife statutes on fewer than ten administrative and visitor facility sites located both inside and outside the National Wildlife Refuges System in Alaska. Examples of these sites include Alaska Maritime Refuge's Visitor Center and Headquarters Complex (fee title land) in Homer, Tetlin Refuge's two campgrounds (leased from the State of Alaska) near Northway, and Kenai Refuge's ''Sportsmen's Lodge'' access and parking area (leased from the State of Alaska and memorandum of understanding with the U.S. Forest Service) on the Kenai River at the Russian River confluence near Cooper Landing. This action is of an administrative nature only, and places no new economic or regulatory burden on the visiting public.

We certify that this document will not have a significant economic effect on a substantial number of small entities such as businesses, organizations and governmental jurisdictions in the area under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1501 et seq., Pub. L. 104–4, E.O. 12875)

This rulemaking does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local or tribal governments or the private sector. See explanation under Regulatory Flexibility Act determination. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

Takings (E.O. 12630)

In accordance with Executive Order 12630, this rule does not have significant takings implications. See explanation under Regulatory Flexibility Act determination.

Federalism (E.O. 12612)

In accordance with Executive Order 12612, this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. It will not have substantial direct effects on the States, in their relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government.

Civil Justice Reform (E.O. 12988)

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act

This regulation does not require an information collection from ten or more parties and a submission under the Paperwork Reduction Act of 1995 is not required.

Section 7 Consultation

We reviewed this rule with regard to Section 7 of the Endangered Species Act of 1973 (16 U.S.C. 1531–1543) and find the action is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of habitat of such species within the System since the rule is administrative, financial, legal, technical or procedural in nature and/or makes minor modifications to existing public use programs.

National Environmental Policy Act

We ensure compliance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4332(C)) when developing refuge public use management plans, and we make determinations required by NEPA before the addition of refuges to the lists of areas open to public uses in 50 CFR part 32. The minor revisions to regulations as outlined in this document amend current regulations to provide us with the proper authority to enforce regulations concerning public safety, protection of government property, and applicable State of Alaska fish and wildlife regulations on administrative and visitor facility sites commonly located outside the approved boundaries of national wildlife refuges in Alaska. In accordance with 516 DM 2, Appendix 1, we have determined that this rule is categorically excluded from the National Environmental Policy Act (NEPA) process because it is limited to ''policies, directives, regulations and guidelines of an administrative, financial, legal, technical or procedural nature.'' 516 DM 2, Appendix 1, Sec. 1.10. These regulations simply qualify or otherwise define methods we may or may not use, for purposes of resource management.

Individual refuge headquarters retain information regarding public use programs and the conditions that apply to their specific programs, and maps of their respective areas. You may also obtain information from the regional office at the address listed below:

Region 7—Alaska. Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, 1011 E. Tudor Rd., Anchorage, Alaska 99503; Telephone (907) 786–3557.

Primary Author

George Constantino, Chief, Division of Refuges, U.S. Fish and Wildlife Service, Alaska Region.

List of Subjects

50 CFR Part 25

Administrative practice and procedure, Concessions, Reporting and recordkeeping requirements, Safety, Wildlife refuges.

50 CFR Part 36

Alaska, Recreation and recreation areas, Reporting and recordkeeping requirements, Wildlife refuges.

For the reasons set forth in the preamble, we amend parts 25 and 36 of Chapter I of Title 50 of the *Code of Federal Regulations* as follows:

PART 25—[AMENDED]

1. The authority citation for part 25 continues to read as follows:

Authority: 5 U.S.C. 301; 16 U.S.C. 460k, 664, 668dd, 715i, 3901 *et seq.*,; and 102–402, 106 Stat. 1961.

2. We amend § 25.12 by revising the section heading and by adding the definition for ''Service'' in alphabetical order to read as follows:

§ 25.12 What do these terms mean?

* * * * *

Service or *we* means U.S. Fish and Wildlife Service, Department of the Interior.

* * * * *

PART 36—[AMENDED]

3. We revise the authority citation for part 36 to read as follows:

Authority: 5 U.S.C. 301; 16 U.S.C. 460(k) *et seq.*, 668dd–668ee, as amended, 742(a) *et seq.*, 3101 *et seq.*; and 44 U.S.C. 3501 *et seq.*

4. Amend § 36.1 by revising the section heading, by revising paragraph (b), and by adding paragraph (c) to read as follows:

§ 36.1 How do the regulations in this part apply to me and what do they cover?

* * * * *

(b) Except as provided in paragraph (c) of this section, the regulations contained in this part are applicable only on federally-owned lands within the boundaries of any Alaska National Wildlife Refuge. For purposes of this part, ''federally-owned lands'' means land interests held or retained by the United States, but does not include those land interests:

(1) Tentatively approved, legislatively conveyed, or patented to the State of Alaska; or

(2) Interim conveyed or patented to a Native Corporation or person.

(c) The regulations found in 50 CFR, parts 25, 26, 27, and 28, and §§ 32.2(d) and 32.5(c), except as supplemented or modified by this part or amended by ANILCA, along with the regulations found in 50 CFR 36.35(d), also are applicable to administrative and visitor facility sites of the Fish and Wildlife Service in Alaska which we may hold in fee or less than fee title and are either inside or outside the approved boundaries of any Alaska National Wildlife Refuge. Less than fee title lands do not include easements under Section 17(b) of the Alaska Native Claims Settlement Act (85 Stat. 688), but although not limited to, they include sites administered by a national wildlife refuge under the terms of a memorandum of understanding or lease agreement.

5. Amend § 36.2 by revising the section heading, by removing paragraph designations (a) through (o), placing existing definitions in alphabetical order, and by adding a new definition in alphabetical order to read as follows:

§ 36.2 What do these terms mean?

* * * * *

Administrative and visitor facility sites means any facility or site administered by the U.S. Fish and Wildlife Service for public entry or other administrative purposes including, but not limited to, refuge staff offices, visitor centers, public access and parking sites, and campgrounds.

* * * * *

6. Amend § 36.33(a) by revising the section heading, and by removing paragraph designations (a)(1) through (a)(11), and placing existing definitions in alphabetical order, to read as follows:

§ 36.33 What do I need to know about using cabins and related structures on Alaska National Wildlife Refuges?

* * * * *

Dated: December 7, 1998.

Donald J. Barry,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 99–6942 Filed 3–23–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 36

RIN 1018–AE58

Seasonal Closure of the Moose Range Meadows Public Access Easements in the Kenai National Wildlife Refuge

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We restrict public access and use of the public easements in the Moose Range Meadows area within the boundary of the Kenai National Wildlife Refuge (Refuge). This seasonal closure is necessary to prevent incompatible levels of bank degradation that occur along the easements due to intensive bank angling during the sockeye (red) salmon fishery each summer. We will prohibit public access and use on our managed easements from July 1 through August 15 annually.

DATES: This rule is effective April 23, 1999.

FOR FURTHER INFORMATION CONTACT: Robin West, Refuge Manager, Kenai National Wildlife Refuge, telephone: (907) 262–7021; or Bob Stevens, Public Involvement Specialist, telephone: (907) 786–3499.

SUPPLEMENTARY INFORMATION:

Background

This seasonal closure is necessary to prevent incompatible levels of bank degradation that occur along the easements due to intensive bank angling during the sockeye (red) salmon fishery each summer. Concentrated bank angling along the easements has led to unacceptable levels of vegetation destruction and accelerated erosion of the riverbank. Healthy riverbank habitats are important in maintaining the Kenai River's famous anadromous and resident fish populations and in meeting the primary purpose of the Refuge.

We manage two public use easements on the banks of the Kenai River within lands conveyed to the Salamatof Native Association, Inc. We reserved the easements under terms of the August 17, 1979, stipulated settlement agreement between the United States, Cook Inlet Region Inc., and Salamatof Native Association Inc. We reserved the subject easements ''. . . for the public at large to walk upon or along such banks, to fish from such banks or to launch or beach a boat upon such banks . . .'' We also reserved two access easements from existing roadways to the river bank easements under the same agreement and limited use of the two access easements to foot travel or wheelchairs.

The level of foot traffic and use on the river bank easements has increased dramatically since the mid-1980's. The development and growth of the sockeye salmon sport fishery is the principal activity which has lead to this high level of public use. In recent years, use has grown to the point where impacts to the vegetated banks of the Kenai River are readily apparent.

Discussions and meetings among our staff, landowners, users, and other State and Federal managing agencies on how to deal with increasing use of the easements have been ongoing since the late 1980's. In 1995, the Kenai National Wildlife Refuge Manager (Refuge Manager) issued an emergency closure of portions of the public access easements pursuant to the authorities granted in 50 CFR 36.42. In issuing the emergency closure, the Refuge Manager determined that the human-caused bank degradation occurring as a result of the intensive bank angling effort was incompatible with the Refuge's purpose to, ''. . . conserve fish and wildlife populations and habitats in their natural diversity including, but not limited to, moose, bears, mountain goats, Dall sheep, wolves and other furbearers, salmonids and other fish, waterfowl and other migratory and nonmigratory birds'', [Alaska National Interest Lands Conservation Act (ANILCA),16 U.S.C. 140hh-3233, 43 U.S.C. 1602–1784]. By regulation, we limited this emergency action to 30 days in duration.

Following the closure in 1995, the Refuge Manager prepared an environmental assessment (EA), with full public involvement, to analyze the management alternatives for the Moose Range Meadows access easements (obtain copies of the EA from the Refuge Manager). Through the EA process, we selected a management alternative that would permanently close the easements

on a seasonal basis. We instituted a temporary closure during the peak use season of 1996 pursuant to 50 CFR 36.42 as an interim management measure. This rulemaking action is a necessary part of implementing the preferred alternative to make permanent the seasonal use closure.

In the March 18, 1998, issue of the **Federal Register** (63 FR 13158–13161) we published a proposed rulemaking and invited public comment on these regulations and received no public comments during the 60-day comment period.

The seasonal closure will be in effect on the 25-foot wide streamside easements on both banks of the Kenai River, and on the 25-foot wide access easements running from Funny River Road and Keystone Drive to the downstream ends of the stream side easements on the south and north banks of the River, respectively. This closure will affect approximately three miles of stream side easements (two miles on the north bank and one mile on the south bank) and an additional one mile of access easements. T. 4 N.; R. 10 W.; Sections 1, 2, and 3; and Seward Meridian contains lands affected by this action. Maps of the affected area are available from the Refuge Manager.

Statutory Authority

The National Wildlife Refuge System Administration Act (NWRSAA) of 1966, (16 U.S.C. 668dd–668ee), and the Refuge Recreation Act (RRA) of 1962, (16 U.S.C. 460k–460k–4) govern the administration and public use of national wildlife refuges.

The National Wildlife Refuge System Improvement Act of 1997 (Pub.L. 105–57) is the latest amendment to the NWRSAA. It amends and builds upon the NWRSAA in a manner that provides an improved ''Organic Act'' for the Refuge System similar to those which exist for other public lands. It serves to ensure that we effectively manage the System as a national system of lands, waters and interests for the protection and conservation of our nation's wildlife resources. The NWRSAA states first and foremost that the mission of the System focus on conservation of fish, wildlife, and plant resources and their habitat. This Act prevents the Secretary from initiating or permitting a new use of a refuge or expanding, renewing, or extending an existing use of a refuge, unless the Secretary has determined that the use is a compatible use and that the use is not inconsistent with public safety.

The RRA authorizes the Secretary to administer areas within the System for public recreation as an appropriate incidental or secondary use only to the extent that it is practicable and not inconsistent with the primary purpose(s) for which we established the areas. This Act requires that any recreational use of refuge lands be compatible with the primary purposes for which we established the refuge and not inconsistent with other previously-authorized operations.

The Alaska National Interest Lands Conservation Act of 1980, (16 U.S.C. 140hh–3233), (43 U.S.C. 1602–1784) (ANILCA), requires that we administer national wildlife refuges in Alaska in accordance with the laws governing the administration of the System. Section 304 of ANILCA adopted the compatibility standard of the Refuge Administration Act for Alaska refuges. When determining appropriate public uses of Alaska refuges, the refuge manager must find the use or uses compatible.

The NWRSAA establishes the same standard of compatibility for Alaska refuges as for other national wildlife refuges, but it specifically requires that ANILCA take precedence if any conflict arises between the two laws. Additionally, the provisions of ANILCA are the primary guidance refuge managers should use when examining compatibility issues regarding subsistence use. We may alter the compatibility process in some cases for Alaska refuges to include additional procedural steps such as when reviewing applications for oil and gas leasing on non-North-Slope lands (ANILCA Sec. 1008) and for applications for transportation or utility corridors (ANILCA Sec. 1104).

Section 22(g) of the Alaska Native Claims Settlement Act provides that patents issued for the land within the boundaries of a refuge existing on December 18, 1971, the date of Act signing, are subject to laws and regulations governing the use and development of such refuges. This includes application of the compatibility standard before uses or development may occur on the land.

Alaska refuges established before the passage of ANILCA have two sets of purposes. Purposes for pre-ANILCA refuges (in effect on the day before the enactment of ANILCA) remain in force and effect, except to the extent that they may be inconsistent with ANILCA or the Alaska Native Claims Settlement Act, in which case the provisions of those Acts apply. However, the original purposes apply only to those portions of the refuge established by executive order or public land order, and not to those portions of the refuge added by ANILCA.

The NWRSAA, and the RRA, also authorize the Secretary to issue regulations to carry out the purposes of the Acts and regulate uses.

This rule regulates public use of our managed easements in a manner that is compatible with Refuge purposes as defined in section 303(4)(B) of ANILCA. We further determined that this action is in accordance with the provisions of all applicable laws, is consistent with principles of sound fish and wildlife management, helps implement Executive Orders 12996 (Management and Public Use of the National Wildlife Refuge System) and 12962 (Recreational Fisheries) and is otherwise in the public interest by regulating recreational opportunities at national wildlife refuges. Sufficient funds will be available within the refuge budgets to operate the hunting and sport fishing programs.

Summary of Public Involvement

The public frequently has focused on the local area where land interests are centered. On February 20, 1996 we conducted a workshop-style public meeting in Soldotna, Alaska. Thirty people attended the discussions; an additional 15 provided written views. We incorporated the information received into an environmental assessment and mailed the EA to those meeting participants requesting a copy. Fourteen persons responded to the assessment with written comments which we considered in the preparation of the decision document. Eleven of those 14 persons writing had property interests affected by the proposed closure.

We published the resulting proposed rule in the **Federal Register** on March 18, 1998 (63 FR 13158), with a 60-day comment period, and on March 19, 1998 held a public meeting attended by approximately fifty people in Soldotna. Two attendees provided testimony in opposition to the closure because we were terminating their customary fishing access. We received no specific recommendations for changing the proposed rule nor did we receive written responses to the proposed rule during the 60-day public review.

In adopting the President's ''plain language'' mandate, we have revised ''(7) Other Public Uses'' to incorporate plain language changes without modifying the substance of the previous restrictions. We included the substantive changes discussed in this preamble in this effort.

Regulatory Planning and Review (E.O. 12866)

This document is not a significant rule subject to Office of Management and Budget review under Executive Order 12866. See explanation under Regulatory Flexibility Act.

1. This rule will not have an effect of $100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. See explanation under Regulatory Flexibility Act.

2. This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. See explanation under Regulatory Flexibility Act.

3. This rule does not alter the budgetary effects or entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients. See explanation under Regulatory Flexibility Act.

4. This rule does not raise novel legal or policy issues. See explanation under Regulatory Flexibility Act.

Regulatory Flexibility Act

This rulemaking will not have a significant economic impact on a substantial number of small entities by decreasing visitation and expenditures in the surrounding area of Kenai NWR. This is not a fishing closure and the same number of anglers will continue to fish the Kenai River. They will simply access the river in a different location.

Since the first emergency closure in 1995, public use has continued to increase. Many of these people are local or own summer homes along the river. They will continue to pay for fishing licenses, magazines, membership dues, contributions, land leasing, ownership, stamps, tags, permits, and tackle.

We calculated economic impacts of refuge fishing programs on local communities from average expenditures in the 1996 National Survey of Fishing, Hunting, and Wildlife-Associated Recreation. In 1996, 35.2 million U.S. residents 16 years old and older enjoyed a variety of fishing opportunities throughout the United States. Anglers fished 626 million days and took 507 million fishing trips. They spent almost $38 billion on fishing-related expenses during the year. Among the 29.7 million freshwater anglers, including those who fished in the Great Lakes, but not Alaska, 515 million days were spent and 420 million trips were taken freshwater fishing. Freshwater anglers spent $24.5 billion on freshwater fishing trips and equipment.

Saltwater fishing attracted 9.4 million anglers who enjoyed 87 million trips on 103 million days. They spent $8.1 billion on their trips and equipment. Trip-related expenditures for food, lodging, and transportation were $15.4 billion; equipment expenditures amounted to $19.2 billion; other expenditures such as those for magazines, membership dues, contributions, land leasing, ownership, licenses, stamps, tags, and permits accounted for $3.2 billion, or 19.2 percent of all expenditures. Overall, anglers spent an average of $41 per day in the lower 48 states and projecting a 25 percent cost of living increase for Alaska, spent an average of $51 per day in Alaska.

Five hundred angler-days, based on past creel surveys in the closure areas, will continue to have the same economic impact ($51./angler-day) on local economies because these anglers that used the closure area will continue to purchase supplies, food or lodging in the area of the refuge, during the time of the closure resulting in a continuation of $25,500 to the local economy.

We certify that this document will not have a significant economic effect on a substantial number of small entities such as businesses, organizations and governmental jurisdictions in the area under the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*).

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. See explanation under Regulatory Flexibility Act.

Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local, or tribal governments or the private sector. See explanation under Regulatory Flexibility Act determination. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

Takings (E.O. 12630)

In accordance with Executive Order 12630, the rule does not have significant takings implications. We have determined that the rule has no potential takings of private property implications as defined by Executive Order 12630. See explanation under Regulatory Flexibility Act analysis.

Federalism (E.O. 12612)

In accordance with Executive Order 12612, the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. It will not have substantial direct effects on the States, in their relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government.

Civil Justice Reform (E.0. 12988)

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act

We have examined this regulation under the Paperwork Reduction Act of 1995 and found it to contain no new information collection requirements for which OMB approval is required. We have not changed the information relating to permits, and you may find it in § 36.3 with OMB approval number 1018–0014.

National Environmental Policy Act

The rule does not constitute a major Federal action significantly affecting the quality of the human environment. We complied with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4332(C)) by completing an environmental assessment following the emergency fishing closure in 1995. On May 9, 1996, we signed a Decision Notice and Finding of No Significant Impact. You may obtain copies of the EA from the Kenai National Wildlife Refuge, P.O. Box 2139, Soldotna, Alaska 99669; telephone: (907) 262–7021. NEPA requires no further documentation.

Section 7 Consultation (16 U.S.C. 1531 et seq., 50 CFR 402)

We reviewed the opening package documents for the seasonal closure of the Moose Range Meadows public access easements in the Kenai National Wildlife Refuge with regards to Section 7 of the Endangered Species Act of 1973 (16 U.S.C. 1531–1543). There are no known listed or candidate species present in this area of the refuge. We find the action as presented will not jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of habitat of such species.

Primary Author

Mark Chase, Deputy Refuge Manager of the Kenai National Wildlife Refuge, is the primary author of this rulemaking document.

List of Subjects in 50 CFR Part 36

Alaska, Recreation and recreation areas, Reporting and recordkeeping requirements, Wildlife refuges.

Accordingly, we amend part 36 of chapter I of title 50 of the Code of Federal Regulations as follows:

PART 36—[AMENDED]

1. The authority citation for part 36 continues to read as follows:

Authority: 5 U.S.C. 301; 16 U.S.C. 460(k) *et seq.*, 668dd–668ee, 742(a) *et seq.*, 3101 *et seq.*; and 44 U.S.C. 3501 *et seq.*

2. Revise § 36.39 (i)(7) to read as follows:

§ 36.39 Public use.

* * * * * *

(i) * * *

(7) *What do I need to know about other public uses on Kenai National Wildlife Refuge?* (i) *What are the camping restrictions?* We allow camping subject to the following restrictions:

(A) Camping may not exceed 14 days in any 30-day period anywhere on the refuge.

(B) Campers may not spend more than two consecutive days at the Kenai-Russian River access area, more than seven consecutive days at Hidden Lake Campground, or more than seven consecutive days in refuge shelters.

(C) Within developed campgrounds, camp only in designated areas and use open fires only in portable, self-contained, metal fire grills, or fire grates provided by us.

(D) Do not camp within ¼ mile of the Sterling Highway, Ski Hill, or Skilak Loop roads except in designated campgrounds.

(E) Campers may cut only dead and down timber for campfire use.

(F) Pets must be on a leash no longer than nine feet in developed campgrounds.

(ii) *May I cut and remove timber?* You may remove timber, including the cutting of firewood for home use, only if you have obtained a special use permit from the Refuge Manager.

(iii) *May I leave personal property on the refuge?* Yes, however, if you leave personal property unattended for longer than 72 hours outside of a designated area, obtain a special use permit from the Refuge Manager.

(iv) *If I find research marking devices, what do I do?* Turn in all radio transmitters, neck and leg bands, ear tags, or other research marking devices recovered from wildlife to the Refuge Manager or the Alaska Department of Fish and Game within five days after recovery.

(v) *May I use non-motorized wheeled vehicles on the refuge?* Yes, but only on refuge roads designated and open for public vehicular access.

(vi) *May I use motorized equipment on the refuge?* You may not use motorized equipment, including but not limited to chainsaws, generators, and auxiliary power units, within the Kenai Wilderness, except snowmobiles, airplanes and motorboats in designated areas.

(vii) *Must I register to canoe on the refuge?* Only canoeists on the Swanson River and Swan Lake Canoe Routes must register at entrance points. Maximum group size is 15 persons.

(viii) *Are any areas of the refuge closed to public use?* (A) We close rock outcrop islands in Skilak Lake used by nesting cormorants and gulls and the adjacent waters within 100 yards to public entry and use from March 15 to September 30. You may obtain maps showing these areas from the Refuge Manager.

(B) From July 1 to August 15 the public may not use or access any portion of the 25-foot wide public easements along both banks of the Kenai River within the Moose Range Meadows area; or along the Homer Electric Association Right-of-Way from Funny River Road and Keystone Drive to the downstream limits of the streamside easements. You may obtain maps showing these closed areas from the Refuge Manager by referring to Sections 1, 2, and 3 of Township 4 North, Range 10 West, Seward Meridian.

* * * * *

Dated: January 24, 1999.

Donald J. Barry,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 99–6943 Filed 3–23–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 678

[I.D. 031899B]

Atlantic Shark Fisheries; Large Coastal Shark Species

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

ACTION: Closure.

SUMMARY: NMFS is closing the commercial fishery for large coastal sharks conducted by persons aboard vessels issued a Federal Atlantic shark permit in the Western North Atlantic Ocean, including the Gulf of Mexico and the Caribbean Sea. This action is necessary to ensure that the semiannual quota of 642 metric tons (mt) for the period January 1 through June 30, 1999, is not exceeded.

DATES: The closure is effective from 11:30 p.m. local time March 31, 1999, through June 30, 1999.

FOR FURTHER INFORMATION CONTACT: Margo Schulze or Karyl Brewster-Geisz, 301–713–2347; fax 301–713–1917.

SUPPLEMENTARY INFORMATION: The Atlantic shark fishery is managed under the Fishery Management Plan for Sharks of the Atlantic Ocean and its implementing regulations found at 50 CFR part 678 issued under authority of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*).

Section 678.24(b) of the regulations provides for two semiannual quotas of large coastal sharks to be harvested from Atlantic, Caribbean, and Gulf of Mexico waters by commercial fishers. The first semiannual quota of 642 mt is available for harvest from January 1 through June 30, 1999.

The Assistant Administrator for Fisheries, NOAA (AA), is required under § 678.25 to monitor the catch and landing statistics and, on the basis of these statistics, to determine when the catch of Atlantic, Caribbean, and Gulf of Mexico sharks will equal any quota under § 678.24(b). When shark harvests reach, or are projected to reach, a quota established under § 678.24(b), the AA is further required under § 678.25 to close the fishery.

Preliminary information indicates that approximately 71 percent of the available quota for large coastal sharks had been landed as of February 28, 1999. Accordingly, the AA has determined, based on the reported catch and other relevant factors, that the semiannual quota for the period January 1 through June 30, 1999, for large coastal sharks in or from the Western North Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea, will be attained as of March 31, 1999. During the closure, retention of large coastal sharks is prohibited for persons fishing aboard vessels issued a permit under § 678.4, unless the vessel is operating as a charter vessel or headboat, in which

case the vessel may retain up to two large coastal sharks per trip subject to the provisions of § 678.25(a)(2). The sale, purchase, trade, or barter or attempted sale, purchase, trade, or barter of carcasses and/or fins of large coastal sharks harvested by a person aboard a vessel that has been issued a permit under § 678.4, is prohibited, except for those that were harvested, offloaded, and sold, traded, or bartered prior to the closure, and were held in storage by a dealer or processor.

Persons fishing aboard vessels issued a Federal Atlantic shark permit under § 678.4 are reminded that, as a condition of permit issuance, the vessel may not retain a large coastal shark during the closure, except as provided by § 678.24(a). Fishing for pelagic and small coastal sharks may continue. The recreational fishery is not affected by this closure.

Classification

This action is taken under 50 CFR part 678 and is exempt from review under E.O. 12866.

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

Dated: March 19, 1999.

Gary C. Matlock,

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

[FR Doc. 99–7235 Filed 3–19–99; 4:48 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 990304062–9062–01; I.D. 031999A]

Fisheries of the Economic Exclusive Zone Off Alaska; Shallow-water Species Fishery by Vessels using Trawl Gear in the Gulf of Alaska

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

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for species that comprise the shallow-water species fishery by vessels using trawl gear in the Gulf of Alaska (GOA), except for vessels fishing for pollock using pelagic trawl gear in those portions of the GOA open to directed fishing for pollock. This action is necessary because the first seasonal apportionment of the 1999 halibut bycatch allowance specified for the trawl shallow-water species fishery in the GOA has been caught.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), March 20, 1999, until 1200 hrs, A.l.t., April 1, 1999.

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

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The Final 1999 Harvest Specifications of Groundfish for the GOA (64 FR 12094, March 11, 1999) established the Pacific halibut bycatch allowance for the GOA trawl shallow-water species fishery, which is defined at § 679.21(d)(3)(iii)(A), the for the first season, the period January 20, 1999, through March 31, 1999, as 500 metric tons.

In accordance with § 679.21(d)(7)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the first seasonal apportionment of the 1999 Pacific halibut bycatch allowance specified for the trawl shallow-water species fishery in the GOA has been caught. Consequently, NMFS is prohibiting directed fishing for species included in the shallow-water species fishery by vessels using trawl gear in the GOA, except for vessels fishing for pollock using pelagic trawl gear in those portions of the GOA open to directed fishing for pollock. The species and species groups that comprise the shallow-water species fishery are: Pollock, Pacific cod, shallow-water flatfish, flathead sole, Atka mackerel, and ''other species''.

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

Classification

This action responds to the best available information recently obtained from the fishery. It must be implemented immediately in order to prevent overharvesting the first seasonal apportionment of the 1999 Pacific halibut bycatch allowance specified for the trawl shallow-water species fishery in the GOA. A delay in the effective date is impracticable and contrary to the public interest. The fleet has already taken the first seasonal bycatch allowance of Pacific halibut. Further delay would only result in the 1999 Pacific halibut bycatch allowance specified for the trawl shallow-water species fishery in the GOA being exceeded. NMFS finds for good cause that the implementation of this action can not be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

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

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

Dated: March 19, 1999.

Bruce C. Morehead,

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

[FR Doc. 99–7223 Filed 3–19–99; 4:11 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 64, No. 56
Wednesday, March 24, 1999

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 113

[Docket No. 99–015–1]

Veterinary Antibody Products; Public Meeting

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of public meeting.

SUMMARY: We are advising veterinary biologics producers and the general public that the Center for Veterinary Biologics will host a public meeting to discuss the regulations for veterinary antibody products. The primary purpose of the meeting is to provide an opportunity for interested parties to discuss the requirements for demonstrating the efficacy of products for treatment of failure of passive transfer and for including a treatment step in the manufacture of antibody products to inactivate potential contaminating microorganisms.

DATES: The public meeting will be held on Thursday, April 29, 1999, from 8 a.m. to 5 p.m.

ADDRESSES: The public meeting will be held in the Scheman Building, Iowa State Center, Ames, IA.

FOR FURTHER INFORMATION CONTACT: Ms. Kathy Clark, Center for Veterinary Biologics-Licensing and Policy Development, VS, APHIS, 510 South 17th Street, Suite 104, Ames, IA, 50010; telephone (515) 232–5785, ext. 112; fax (515) 232–7120. Information is also available on the Internet at http://www.aphis.usda.gov/vs/cvb/lpd/notices/notices.html.

SUPPLEMENTARY INFORMATION:

Background

The Center for Veterinary Biologics will be holding a public meeting to discuss the regulations for veterinary antibody products under the Virus-Serum-Toxin Act (21 U.S.C. 151, *et seq.*). The regulations are contained in the Code of Federal Regulations, title 9, part 113, §§ 113.450 through 113.499. Manufacturers of antibody products for treatment of failure of passive transfer (FPT) have had some difficulty with the new efficacy requirements and some have indicated that they have not been able to successfully carry out the required treatment step during production to inactivate potential contaminating microorganisms.

The Center for Veterinary Biologics is holding this meeting to primarily discuss two issues. The first issue is whether the IgG content of the IgG Species Standards produced by the Animal and Plant Health Inspection Service and used in evaluating the efficacy of bovine and equine FPT products is too high. The second issue is whether the treatment requirement to inactivate potential contaminants needs to be applied in all cases, and whether there are alternative treatments that can be used. Participants will also have an opportunity to comment on other aspects of the antibody product regulations. The comments received during the meeting will aid the Center for Veterinary Biologics in determining whether the antibody product regulations need to be amended.

We expect to finalize the agenda soon. When the agenda is complete, it will be available from the person listed under **FOR FURTHER INFORMATION CONTACT**, as well as from the Internet address listed in that section.

The meeting on April 29, 1999, will begin at 8 a.m. and is scheduled to end at 5 p.m.; however, it may end earlier if all persons desiring to speak have been heard. Persons who wish to make a prepared statement should indicate their intention to do so at the time of registration and provide the subject of their remarks and the approximate length of time that will be necessary. Any person attending the meeting who did not indicate that he or she would speak will be given an opportunity to speak after the registered speakers have finished, as time permits.

Registration information, registration forms, and lodging information are available from the person listed under **FOR FURTHER INFORMATION CONTACT**, as well as from the Internet address listed in that section. If you do not register prior to the meeting, you may register at the meeting location from 7:30 a.m. to 8:00 a.m., local time, on the day of the meeting.

Done in Washington, DC, this 18th day of March 1999.

Craig A. Reed,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 99–7187 Filed 3–23–99; 8:45 am]

BILLING CODE 3410–34–P

FEDERAL TRADE COMMISSION

16 CFR Ch. I

Announcement of Date of Public Workshop on the Interpretation of Rules and Guides for Electronic Media, Procedure for Requesting to Participate, and Request for Submission of Advertisements

AGENCY: Federal Trade Commission.

ACTION: Announcement of date of public workshop on the interpretation of Federal Trade Commission rules and guides for electronic media, procedures for requesting to participate, and request for submission of advertisements for use at the workshop.

SUMMARY: On May 6, 1998, the Federal Trade Commission (''Commission'') published a **Federal Register** Notice seeking public comments on its proposal to issue a policy statement regarding the applicability of its rules and guides to electronic media, such as e-mail, CD–ROMs, and the Internet. The Commission also solicited comment regarding interest in participating in or attending a workshop to discuss the issues raised in the **Federal Register** Notice. As a part of the review of these issues, the Commission has scheduled the workshop for May 14, 1999 at its headquarters at 600 Pennsylvania Ave., NW, Washington, DC. Today's **Federal Register** Notice discusses the topics to be discussed at the workshop and the procedures to be followed by those who wish to participate in the workshop. The Commission also solicits the submission of mock advertisements to be used at the workshop to discuss some of the issues raised in its Notice and in the comments.

DATES: Requests to participate at the workshop must be submitted by April 12, 1999, and any examples of advertisements to be used at the workshop must be submitted by April 19, 1999.

ADDRESSES: All submissions should be sent either to the Office of the Secretary, Federal Trade Commission, Room 159, 600 Pennsylvania Avenue, NW, Washington, DC 20580, or by e-mail to <elecmedia@ftc.gov>. The submissions should include the submitter's name, address, telephone number and, if available, FAX number and e-mail address. All submissions should be captioned ''Interpretation of Rules and Guides for Electronic Media—FTC File No. P974102.''

FOR FURTHER INFORMATION CONTACT: Laura J. DeMartino, Attorney, Federal Trade Commission, 600 Pennsylvania Avenue, NW, Washington, DC 20580, telephone (202) 326–3030, e-mail <Ldemartino@ftc.gov>.

SUPPLEMENTARY INFORMATION:

I. Background

In a May 6, 1998 **Federal Register** Notice, the Federal Trade Commission (''Commission'') solicited public comment on its proposal to issue a policy statement regarding the applicability of its consumer protection rules and guides to newer forms of electronic media, such as e-mail, CD–ROMs, and the Internet (hereinafter collectively referred to as ''electronic media''). The Notice discussed the Commission's proposals with respect to: (1) The extent to which the Commission's rules and guides apply to representations disseminated through, and activities occurring on, electronic media; (2) how businesses may comply with the Commission's rules and guides in advertising products and services and conducting commercial activities using electronic media; (3) interpretations of certain terms in light of the use of electronic media and how electronic media could be used to comply with the affirmative disclosure requirements of the rules and guides; and (4) how disclosures required or recommended by the Commission's rules and guides should be made in electronic media advertisements.[1] The purpose of the Notice, and any future policy statement by the Commission, was to reduce any uncertainty regarding whether the rules and guides applied to activities on the Internet and provide guidance to industry in complying with the rules and guides in electronic media. The Commission also solicited comment regarding interest in a workshop to discuss the issues raised in the Notice.

The Commission received 62 comments in response to the Notice.[2] A number of comments advised the Commission to proceed carefully in developing guidance for electronic media advertising, to avoid inadvertently burdening business or stifling new technology. Many comments expressed interest in participating in a public workshop to more fully discuss the issues related to the applicability of the rules and guides to electronic media. The Commission has concluded that a workshop will afford Commission staff and interested parties an opportunity to explore a number of the issues raised in the Notice and the comments. The workshop would not be intended to achieve a consensus among participants, or between participants and Commission staff, with regard to any issue raised in the Notice. The Commission will consider the views and suggestions made during the workshop, in addition to the written comments received, in formulating any future guidance regarding the application of its rules and guides to electronic media.

II. Date, Time and Location of Workshop

The workshop is scheduled to be held in the FTC headquarters building, 600 Pennsylvania Avenue, NW, Washington, DC, on May 14, 1999.

III. Workshop Sessions

The workshop will be divided into two sessions, focusing on the issues that generated significant public comment and that the Commission believes will be useful to discuss further with participants. Session One will discuss how the Commission should evaluate whether disclosures required or recommended by the rules and guides are made clearly and conspicuously in electronic media advertisements. Session Two will discuss the interpretation of the terms ''written,'' ''writing'' and ''printed,'' as used in the rules and guides, in light of the use of electronic media. This session will also discuss how electronic media may be used to comply with requirements to provide information to consumers ''in writing'' or by ''mail.''[3] An agenda of the workshop will be provided to all interested parties as soon as practicable.

IV. Interpretation of the Term ''Direct Mail''

The Commission has determined not to discuss at the workshop the use of the term ''direct mail'' in the rules and guides. The Commission proposed interpreting this term to include communications that are individually addressed and capable of being received privately (e.g., e-mail). Many written comments addressing this issue concur that e-mail is a form of direct mail, and additional workshop discussion on the issue is unlikely to contribute significantly to the record.

The comments, however, offered differing opinions and rationales as to whether targeted Internet advertising is properly considered a form of direct mail or other media advertising. The use of targeted advertising on the Internet and consumers' perceptions of it are still evolving and there is likely to be considerable variation in the extent to which such advertising is personalized to the individual consumer or viewer. Thus, the Commission has concluded it is premature, at this point, to consider defining whether or not targeted Internet advertising, in all of its varying forms, is direct mail.

V. Interpretation of ''Clear and Conspicuous'' Disclosures

The Notice solicited comment on how the Commission should evaluate whether disclosures required or recommended by the rules and guides are clear and conspicuous in electronic media advertisements. In determining whether a disclosure is clear and conspicuous, the Commission evaluates the nature of the advertisement and the claim and generally considers a number of factors. Because of the unique nature of electronic media advertisements, the Notice solicited comment on how these factors should be applied in evaluating such ads. The purpose of this proceeding is not to develop specific rules as to how all disclosures in electronic media advertisements should be made. Instead, this proceeding will inform the Commission's analysis of disclosures in electronic media advertisements and may provide a basis for future guidance for businesses in making online disclosures effectively.

The Notice, and the comments received in response to it, raise challenging issues regarding whether disclosures in electronic media advertisements are displayed clearly

[1] The May 6, 1998 **Federal Register** Notice specifies the rules and guides that are being considered in this proceeding. *See* 63 FR 24998 (May 6, 1998). The Commission is not addressing regulations issued by the Federal Reserve Board and enforced by the Commission: Regulation B, 12 CFR part 202; Regulation E, 12 CFR part 205; Regulation M, 12 CFR part 213; Regulation Z, 12 CFR part 226.

[2] The comments are available for viewing at the Commission's headquarters, 600 Pennsylvania Ave., NW, Room 130, Washington, DC 20580. The comments also are available on the Commission's website at <http://www.ftc.gov/bcp/rulemaking/elecmedia/index.htm>.

[3] Other issues relating to electronic media generally, such as privacy or electronic payment technologies, will not be addressed in this workshop.

and conspicuously. Some of these issues include:

(1) The disclosure's proximity to the claim being modified and its placement in the context of the advertisement, including

(a) Whether the disclosure should be placed on the same screen as the claim it modifies,

(b) The difficulties faced by advertisers in placing disclosures on the same screen,

(c) Whether disclosures accessible by a hyperlink are effective and the nature of the hyperlink used;

(2) The disclosure's prominence;

(3) Whether factors in other parts of the advertisement distract consumers' attention away from the disclosure;

(4) Whether the disclosure should be repeated in a lengthy advertisement;

(5) Whether the disclosure should be made in the same mode (visual, audio) as the claim; and

(6) Whether a website contains features that ''block'' a consumer from returning to a page with a disclosure, after the consumer links to another page on the site.

VI. Request for Submission of Advertisements

To encourage a productive discussion of these issues at a workshop, Commission staff will request participants to discuss mock advertisements that staff has produced. The Commission also is providing interested parties with an opportunity to submit mock advertisements that may be useful for discussion at the workshop. The advertisements should contain disclosures that are required or advised by the rules and guides and should highlight the issues faced in evaluating whether the disclosures are clear and conspicuous. The advertisement should not feature real products or services and it should not identify the individual or company who created it. Parties interested in creating advertisements should first contact Laura DeMartino, 202/326–3030, to discuss their proposed advertisement.

If the number of advertisements submitted is so large that it would be impossible to discuss all of them at the workshop, Commission staff will choose those advertisements that best exemplify the issues to be discussed. All examples should be submitted by April 19, 1999. The advertisements should be submitted in the format in which they should be displayed at a workshop (e.g., HTML format). Prior to the workshop, Commission staff will make available the mock advertisements that will be discussed.

The Commission also encourages interested parties to submit the results of any research or studies regarding consumer behavior or perceptions of electronic media advertisements for discussion at the workshop.

VII. Request to Participate

To be eligible to participate in the workshop, you must file a request to participate by April 12, 1999. The request should specify the workshop sessions in which you are interested. Any persons who wish to participate in the workshop, but did not submit a written comment, should submit a short statement of their views. If the number of parties who request to participate in the workshop is so large that including all requesters would inhibit effective discussion among the participants, Commission staff will select as participants a limited number of parties to represent the interests. Selection will be based on the following criteria:

(1) The party submitted a request to participate by April 12, 1999.

(2) The party's participation would promote the representation of a balance of interests at the workshop.

(3) The party's participation would promote the consideration and discussion of the issues presented in the workshop.

(4) The party has expertise in issues raised in the workshop.

(5) The party adequately reflects the view of the affected interest(s) which it purports to represent.

If it is necessary to limit the number of participants, those who requested to participate but were not selected will be afforded an opportunity, if at all possible, to present statements during a limited time period at the end of one or more sessions. The time allotted for these statements will be based on the amount of time necessary for discussion of the issues by the selected parties, and on the number of persons who wish to make statements.

Requesters will be notified as soon as possible after April 12, 1999 if they have been selected to participate.

By direction of the Commission, Commissioner Swindle not participating for medical reasons.

Donald S. Clark,

Secretary.

[FR Doc. 99–7125 Filed 3–23–99; 8:45 am]

BILLING CODE 6750–01–P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Parts 1213, 1500 and 1513

Bunk Beds; Notice of Opportunity for Oral Presentation of Comments

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of opportunity for oral presentation of comments.

SUMMARY: The Commission announces that there will be an opportunity for interested parties to present oral comments on a proposed rule that could reduce unreasonable risks of injury and death associated with bunk beds that are constructed so that children can become entrapped in the beds' structure or become wedged between the bed and a wall. The Commission also requests that interested parties address the question of what constitutes substantial compliance with a voluntary standard. Any oral comments will be part of the rulemaking record.

DATES: If requests for oral presentations of comments are received, the presentations will begin at 10 a.m., May 6, 1999, in Room 420 in the Commission's offices at 4330 East-West Highway, Bethesda, MD 20814.

Requests to present oral comments must be received by April 22, 1999. Persons requesting an oral presentation must file a written text of their presentations no later than April 29, 1999.

ADDRESSES: Requests for oral presentations of comments should be mailed to the Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207–0001, or delivered to the Office of the Secretary, Consumer Product Safety Commission, Room 502, 4330 East-West Highway, Bethesda, Maryland; telephone (301) 504–0800. Requests may also be filed by telefacsimile to (301) 504–0127 or by email to cpsc-os@cpsc.gov. Requests to make oral presentations and texts of presentations should be captioned ''Oral Comment; NPR for Bunk Beds.''

FOR FURTHER INFORMATION CONTACT: Concerning the substance of the proposed rule: John Preston, Project Manager, Directorate for Engineering Sciences, Consumer Product Safety Commission, Washington, D.C. 20207–0001; telephone (301) 504–0494, ext. 1315; email jpreston@cpsc.gov. Concerning requests and procedures for oral presentations of comments or to request a copy of the December 16, 1998 memorandum by the Office of General Counsel on the issue of substantial compliance: Rockelle Hammond, Docket

Control and Communications Specialist, Consumer Product Safety Commission, Washington, DC 20207; telephone: (301) 504–0800 ext. 1232. Information about this rulemaking proceeding may also be found on the Commission's web site: www.cpsc.gov.

SUPPLEMENTARY INFORMATION: The Consumer Product Safety Commission (''CPSC'' or ''Commission'') has reason to believe that unreasonable risks of injury and death are associated with bunk beds that are constructed so that children can become entrapped in the beds' structure or become wedged between the bed and a wall.

On March 3, 1999, the Commission proposed a rule that, if issued, would mandate bunk bed performance requirements to reduce this hazard. 64 FR 0245.[1] These requirements would be issued under both the Federal Hazardous Substances Act (''FHSA''), for bunk beds intended for use by children, and the Consumer Product Safety Act (''CPSA''), for beds not intended for children.

During the course of the February 3, 1999 decision meeting, the Commissions unanimously indicated an interest in receiving public comments as to the interpretation of substantial compliance with a voluntary standard. The Commission has taken no position on the interpretation proffered by the Office of General Counsel in its memorandum to the Commission dated December 16, 1998, or on the factors that the Office of Compliance suggested for consideration in the March 3, 1999 **Federal Register** notice, and seeks public comment on both. The Commission's findings on this issue can be determinative as to when it may proceed with a rulemaking with regard to a product for which there is an existing voluntary standard.

As required by Section 9(d)(2) of the Consumer Product Safety Act, 15 U.S.C. 2058(d)(2), there will be an opportunity for interested parties to present oral comments on the proposal. See the information under the headings **DATES** and **ADDRESSES** at the beginning of this notice. Any oral comments will be part of the rulemaking record.

Commenters should limit their presentations to approximately 10 minutes, exclusive of any periods of questioning by the Commissioners or the CPSC staff. The Commission reserves the right to further limit the time for any presentation and to impose restrictions to avoid excessive duplication of presentations.

Dated: March 18, 1999.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 99–7119 Filed 3–23–99; 8:45 am]

BILLING CODE 6355–01–P

[1] The Commission approved the notice publishing the proposed rule by a vote of 2–0–1. Chairman Ann Brown and Commissioner Thomas H. Moore voted to approve the notice; Commissioner Mary Sheila Gall abstained. Each commissioner issued a statement concerning his or her position on the proposal. Copies of the statements can be obtained from the Commission's Office of the Secretary.

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 1 and 30

Access to Automated Boards of Trade

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed rules.

SUMMARY: On July 24, 1998, the Commodity Futures Trading Commission (''CFTC'' or ''Commission'') published in the **Federal Register** a ''concept release'' seeking public comment on issues related to permitting the use in the U.S. of automated trading systems providing access to electronic boards of trade otherwise primarily operating outside the U.S. Following its review of the comments received on the concept release, the Commission has determined to propose new rules concerning automated access to these boards of trade from within the U.S. The Commission is proposing herein a new Rule 30.11 that would establish a procedure for an electronic exchange operating primarily outside the U.S. to petition the Commission for an order that would permit use of automated trading systems that provide access to the board of trade from within the U.S. without requiring the board of trade to be designated as a U.S. contract market. If appropriate in light of the information provided in a petition, the Commission would issue an order under section 4(c) of the Commodity Exchange Act (''Act'' or ''CEA'') that would allow a member of the petitioner board of trade or an affiliate thereof to operate automated trading systems that provide access to the board of trade in the U.S., subject to specified conditions.

The Commission also is proposing a new Rule 1.71, which would apply both to domestic and foreign firms. New Rule 1.71 would clarify that U.S. customers and foreign futures and foreign options customers wishing to trade on or subject to the rules of the automated trading system of a U.S. contract market or on or subject to the rules of the automated trading system of an exchange otherwise operating primarily outside the U.S. may place orders via automated order routing systems, provided that such systems meet certain minimum requirements and provide certain safeguards such as automated checks for customer trading or position limits and credit limits.

The rules proposed herein are focused on boards of trade with automated order matching/execution, often referred to as ''electronic exchanges,'' and do not address the use of order routing systems or other communication devices that provide access to traditional open outcry exchanges.

DATES: Comments must be received on or before April 23, 1999.

ADDRESSES: Comments on the proposed rules may be sent to Jean A. Webb, Secretary of the Commission, Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, DC 20581. In addition, comments may be sent by facsimile transmission to facsimile number (202) 418–5521 or by electronic mail to secretary@cftc.gov. Reference should be made to ''Access to Automated Boards of Trade.''

FOR FURTHER INFORMATION CONTACT: David M. Battan, Chief Counsel, Lawrence B. Patent, Associate Chief Counsel, or Charles T. O'Brien, Attorney Advisor, Division of Trading and Markets, Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, DC 20581. Telephone (202) 418–5450.

SUPPLEMENTARY INFORMATION:

I. Introduction

Significant developments in technology in recent years have made automated trading methods a significant addition or alternative to traditional open outcry for trading commodity futures and option products on or subject to the rules of foreign and domestic boards of trade. In February 1996, the Commission's Division of Trading and Markets (''Division'') issued a no-action letter to the Deutsche Terminborse (''DTB'' or ''Eurex''),[1] an automated international futures and option exchange headquartered in Frankfurt, Germany, in which the Division agreed, subject to certain conditions, not to recommend enforcement action to the Commission if Eurex placed computer terminals in the U.S. offices of its members for principal trading[2] and, where the Eurex member

[1] In June 1998, DTB changed its name to Eurex Deutschland (''Eurex'').

[2] A ''principal'' trade under Eurex rules is limited to a trade made by a Eurex member for its own

Continued

is also an FCM registered under the Act,[3] for trading on behalf of U.S. customers as well, without Eurex being designated as a U.S. contract market (''Letter'').[4] Since the Division's issuance of the Letter, several other boards of trade that have heretofore operated outside the U.S. have requested similar relief.

In light of these requests, the Commission determined that it is appropriate to address, through the Commission's rulemaking process, the subject of the use in the U.S. of automated trading systems that provide access to boards of trade whose primary operations otherwise take place outside the U.S. The Commission began this process in July 1998 by publishing in the **Federal Register** a concept release seeking public comment on a wide variety of questions concerning the use of automated trading systems in the U.S. and on a possible regulatory structure to address these questions. After reviewing the comments received and engaging in discussions with industry participants, the Commission has decided to propose rules that incorporate many of the general principles set forth for comment in the concept release. However, based upon the comments received and the Commission's further consideration of the issues, the proposal contains a number of refinements to the model set forth in the concept release.

The Commission's purpose in issuing these proposed rules is to create a framework for addressing the regulatory issues that arise from the increasing globalization of futures exchanges. The procedures set forth herein are intended to provide an exemption from the contract market designation requirement for boards of trade that are established in a foreign country and that have historically operated solely within that countries other than the U.S., but that as a result of a desire to take advantage of technological advancements, now wish to make their products accessible from within the U.S. via trading screens, the Internet, or other automated trading systems. Boards of trade that are accessible within the U.S. in this manner are not ''located outside the U.S.'' for purposes of section 4(a) of the Act and might, accordingly, be required to be designated as contract markets absent an exemption under Section 4(c) of the Act.[5] However, the Commission does not believe that it would be appropriate to require these exchanges to be designated as contract markets as long as they would be subject to generally comparable regulation in their home countries. Exemption from the contract market designation requirement and other related requirements under the Act and Commission regulations would avoid duplicative regulation, would encourage other countries to allow access to the automated trading systems of U.S. exchanges and would encourage global competition and open markets in the industry. The Commission believes that the petition approach set forth below would provide the Commission with the information necessary to identify those boards of trade that would be ''located in the U.S.'' by virtue of being accessible from within the U.S. via automated trading systems, but that otherwise would continue to be primarily operated outside the U.S. The Commission would exercise its power under section 4(c) of the Act to exempt such boards of trade from regulation under the Act if the requirements described below are satisfied. Further, the process described herein is flexible enough that, if the locus of the board of trade's activities is such that it should be subject to all requirements of the Act and the Commission's regulations, if the board of trade is not subject to a generally comparable regulatory structure, or if the board of trade has been established and structured purposefully to evade U.S. regulation, the Commission can require it to become a designated contract market.

In determining whether to exercise its section 4(c) exemptive authority with respect to a particular petitioner, the Commission believes that it is essential to its customer protection obligations under the Act to ensure that certain general standards have been met. Specifically, the Commission intends to ensure that: (1) The petitioner is an established board of trade that wishes to place within the United States an automated trading system permitting access to its products but whose activities are otherwise primarily located in a particular foreign country that has taken responsibility for regulation of the petitioner; (2) the petitioner's home country has established a regulatory scheme that is generally comparable to that in the U.S. and provides basic protections for customers trading on markets and for the integrity of the markets themselves; (3) except for certain incidental contacts with the U.S., the petitioner is present in the U.S. only by virtue of being accessible from within the U.S. via its automated trading system; (4) the petitioner is willing to submit itself to the jurisdiction of the Commission and the U.S. courts in connection with its activities conducted under an exemptive order; (5) the petitioner's automated trading system has been approved by the petitioner's home country regulatory following a review of the system that applied the standards set forth in the 1990 International Organisation of Securities Commissions (''IOSCO'') report on screen-based trading systems (as may be revised and updated from time-to-time) or substantially similar standards; and (6) satisfactory information sharing arrangements are in effect between the Commission and the petitioner and the petitioner's regulatory authority. As discussed further in the description of the petition procedure below, a petitioner which satisfies these standards may be issued an order under section 4(c) of the Act that exempts the petitioner from the contract market designation requirements of section 4(a) of the Act and related statutory and regulatory provisions.

II. The Concept Release

The July 1998 concept release raised general questions concerning, among other things, how to define an

account. Eurex's definition of ''principal'' is thus narrower than the definition of ''proprietary'' found in Commission Rule 1.3(y). A proprietary trade under Commission rules includes not only transactions made by futures commission merchants (''FCMs'') for their own accounts, but also those made by certain affiliates and insiders of the FCM for their respective accounts carried by the FCM.

[3] 7 U.S.C. 1 *et seq.* (1994).

[4] *See* CFTC Interpretative Letter No. 96–28, (1996–1997 Transfer Binder) Comm. Fut. L. Rep. (CCH) ¶ 26,669 (Feb. 29, 1996). For a thorough discussion of prior Division actions concerning automated trading system use in the U.S., *see* the Commission's concept release, discussed below. 63 FR 39779 (July 24, 1998).

[5] Section 4(a) of the Act states in relevant part:

* * *[I]t shall be unlawful for any person to offer to enter into, to enter into, to execute, to confirm the execution of, or to conduct any office or business anywhere in the U.S., its territories or possessions, for the purpose of soliciting, or accepting any order for, or otherwise dealing in, any transaction in, or in connection with a contract for the purchase or sale of a commodity for future delivery (other than a contract which is made on or subject to the rules of a board of trade, exchange, or market located outside the U.S., its territories or possessions) unless—

(1) such transaction is conducted on or subject to the rules of a board of trade which has been designated by the Commission as a ''contract market'' for such commodity;

(2) such contract is executed or consummated by or through a member of such contract market; and

(3) such contract is evidenced by a record in writing * * *.

Section 4(c) of the Act provides the Commission with authority ''by rule, regulation, or order'' to exempt ''any agreement, contract or transaction'' from the requirements of Section 4(a) of the act if the Commission determines that the exemption would be consistent with the public interest, that the contracts would be entered into solely by appropriate persons and that the exemption would not have a material adverse effect on the ability of the Commission or any contract market to discharge its regulatory or self-regulatory duties under the Act. 7 U.S.C. 6(a) and 6(c) (1994).

automated system that would be subject to Commission rules, how to treat the use of automated order routing systems located in the U.S. when they are employed to enter orders through a futures commission merchant (''FCM'') (or through a firm exempt from registration pursuant to Commission Rule 30.10, also referred to as a ''Rule 30.10 firm'')[6] for execution on a board of trade operated primarily outside the U.S., and how to determine if a board of trade's activities in the U.S. are such that it should be subject to all of the requirements of the Act and the Commission's regulations. The concept release also set forth for comment a possible regulatory approach that was intended to promote discussion on the appropriate means to resolve these and related issues.

The Commission initially provided a 60-day comment period on the concept release, through September 22, 1998. On September 18, 1998, the Commission extended the comment period for fifteen days, through October 7, 1998. The Commission received 31 comments on the release: 19 from futures exchanges, three from FCMs, two from futures trade associations, two from commodity trading advisors (one of which is also a registered commodity pool operator), one from a futures self-regulatory authority, one from an exchange member and three from foreign securities/futures regulatory authorities. In addition, the Commission was aided significantly in the development of these proposed rules by the work of the Commission's Global Markets Advisory Committee which held two public meetings on these issues, as well as the Committee's Working Group on Electronic Terminals which prepared a report for the Commission on these issues. The Commission's Financial Products Advisory Committee also held a public meeting at which these issues were discussed.

In general, most commenters supported the Commission's effort to develop uniform rules concerning the use from within the U.S. of automated trading systems that provide access to boards of trade operated primarily outside the U.S. For example, Her Majesty's (''HM'') Treasury, the regulator that is authorized to grant foreign exchanges the right to have their automated trading systems placed in the U.K.[7] indicated in its comment letter that the approach set forth in the concept release is similar to that applied by HM Treasury when processing similar requests in the U.K. Other commenters, however, took issue with various aspects of the possible regulatory approach set forth in the concept release. Certain specific comments concerning the approach set forth in the concept release and the issues related thereto are discussed in the description of the proposed rules which follows.

The Commission believes that the rules proposed herein will establish a regulatory approach that addresses the important issues presented by the use of automated trading systems in the U.S. by boards of trade otherwise operated primarily outside the U.S. in a manner that will foster growth of the global marketplace while fulfilling the Commission's obligations under the Act to protect U.S. customers and to maintain the integrity and competitiveness of U.S. markets. The Commission looks forward to the comments on the proposed rules herein and will consider such comments carefully in adopting any final rules.

III. The Proposed Rules

A. Definitions

Proposed Rules 30.11(a) (1) and (2) distinguish between two major types of automated trading systems and establish two mutually exclusive definitions, ''direct execution system'' (''DES'') and ''automated order routing system'' (''AORS''). As explained more fully below, DES is a term that encompasses any system that allows entry of orders from within the U.S. for an automated board of trade, except those systems that satisfy the definition of AORS. AORSs generally are systems on which customers or their representatives would submit orders through an FMC or rule 30.10 firm for automated execution, although the definition covers every system on which an order is transmitted to another party and then transmitted to an automated board of trade. It should be noted that the definitions of DES and AORS, and these rules generally, only apply in the context of automated or ''electronic'' boards of trade where orders are matched and executed at the board of trade without substantial human intervention. Order routing or other devices that are used to enter or to communicate trades to be executed on traditional open outcry exchanges are not within the ambit of these rules.[8] If one exchange organization operates both an electronic exchange and an open outcry exchange, the proposed rules would apply to the former but not to the latter. The Commission wishes to emphasize that the definitions of DES and AORS are structured so that every device, system or software upon which orders for products traded on boards of trade can be entered from within the U.S. for any electronic exchange would fall into one or the other category.[9]

It should be noted further that, while those rules provide standards for exemptive relief to certain boards of trade with respect to their exchange-traded products, these rules do not sanction the trading of off-exchange products, nor do they alter, restrict or

[6] Commission Rule 30.10 provides for a process whereby any person affected by any requirement in the Commission's part 30 rules may petition the Commission for an exemption from such requirement. Appendix A to the part 30 rules provides an interpretative statement that clarifies that a foreign regulator or self-regulatory organization (''SRO'') can petition the Commission under Rule 30.10 for an order to permit firms that are members of the SRO and subject to regulation by the foreign regulator to conduct business from locations outside the U.S. for U.S. persons on non-U.S. boards of trade without registering under the Act—based upon substituted compliance with a foreign regulatory structure found comparable to that administered by the Commission under the Act. In considering a request from a foreign regulatory or self-regulatory authority for Rule 30.10 comparability relief, the Commission considers, among other things: (1) Registration, authorization or other form of licensing, fitness review, or qualification of persons through whom customer orders are solicited and accepted; (2) minimum financial requirements for those persons that accept customer funds; (3) minimum sales practice standards, including disclosure of risks and the risk of transactions undertaken outside of the United States; (4) procedures for auditing compliance with the requirements of the regulatory program, including recordkeeping and reporting requirements; (5) protection of customer funds from misapplication; and (6) the existence of appropriate information-sharing agreements. The Commission has issued orders to permit certain foreign firms that have comparability relief under Rule 30.10 to engage in limited marketing activities of foreign futures and option products from locations within the United States. *See* orders of October 28, 1992, 57 FR 49644 (Nov. 3, 1992), and August 4, 1994, 59 FR 42156 (Aug. 17, 1994).

[7] Specifically, HM Treasury is authorized to grant a foreign exchange status as a ''recognized overseas investment exchange'' (''ROIE'') and to monitor ROIEs operating in the U.K. through automated trading systems placed in the U.K. HM Treasury's responsibilities with respect to ROIEs are to be transferred to the Financial Services Authority (''FSA'') with the enactment of the Financial Services and Markets Bill, which is anticipated to take place some time toward the end of 1999.

[8] The definitions of DES and AORS apply to systems that access boards of trade where trade execution takes place ''without *substantial* human intervention.'' See proposed Rules 30.11(a)(1) and 1.3(tt) (emphasis added). The word ''substantial'' is included to make clear that an automated or electronic exchange cannot evade the application of these rules by inserting clerical or trivial human action into the trade matching/execution process. Execution on traditional open outcry exchanges involves substantial human intervention and, as noted above, is beyond the scope of these rules.

[9] A determination as to whether a system is a DES or an AORS is not dependent on who designs, maintains or provides the system. That a particular system implementation uses third-party hardware, networks or services will not prevent it from being a DES or AORS.

expand the coverage of existing Commission exemptions for particular classes of products. For example, an illegal off-exchange futures product that is traded in violation of the Act may not lawfully be traded via an AORS, even if such AORS satisfies the requirements of the proposed rules. Likewise, a product that has been exempted from relevant provisions of the Act need not satisfy the requirements of these rules unless the Commission rule or order exempting the product so indicates.[10]

Paragraph (a)(1) of proposed Rule 30.11 defines a DES as any system of computers, software or other devices that allows the entry of orders for products traded on a board of trade's computer or other automated device where, without substantial human intervention, trade matching or execution takes place. One common example of a DES is a board of trade's proprietary computer terminal (*e.g.*, a dedicated Eurex computer terminal where members place orders that are then executed in the exchange's matching system). However, the term DES would also include any other device that currently is being used or may be used in the future to provide access to a board of trade's automated matching engine. Such devices might include, for example, computer software that facilitates access via a personal computer or other electronic device, an automated telephonic system that is connected, or can be used to connect, to the main computer of a board of trade primarily operated outside the U.S. for order matching and execution, and direct Internet access to such a board of trade through a personal computer, telephone or similar device. Thus, for example, if a board of trade that is otherwise primarily operated outside the U.S. were to provide its members in the U.S. with personal identification numbers or passwords that permitted such members to access and to place orders on the board of trade via an automated telephone system or Internet connection, the board of trade would be covered by the proposed rules.

Paragraph (a)(2) of proposed Rule 30.11 defines AORS. This term is defined by reference to a definition that is being proposed herein to be added as new Rule 1.3(tt).[11] Proposed rule 1.3(tt) in turn would define an AORS as any system of computers, software or other devices that allows entry of orders through another party for transmission to a board of trade's computer or other automated device where, without substantial human intervenion, trade matching or execution takes place. The Commission anticipates that the most common form of an AORS will be computer software that is provided by an FCM (or Rule 30.10 firm) to customers, foreign futures and options customers, or their representatives such as CTAs to enter orders on a board of trade or on several boards of trade. This rule is intended to cover an AORS used by any person for trading on a designated contract market's automated system, whether the person, his or her representative or the AORS is located in the U.S. or outside of the U.S. The AORS in these circumstances must provide for trading through an FCM. The rule also is intended to cover trading by a person located in the U.S. on a board of trade that otherwise primarily is operated outside the U.S. and that has received a Commission exemptive order under these rules or whose products are accessible as part of an automated trading system pursuant to rules of a designated contract market that have been submitted to the Commission and are in effect pursuant to section 5a(a)(12)(A) of the Act and Rule 1.41 (hereinafter referred to as a ''linked exchange''). The AORS in the latter circumstances must provide for trading through an FCM or a Rule 30.10 firm.

Rule 30.10 firms may not solicit or accept orders from U.S. persons for trading on designated contract markets, and these proposed rules are not intended to affect that prohibition. Under these rules, however, Rule 30.10 firms would be authorized to solicit or accept orders from U.S. customers for products traded on automated boards of trade that obtain a Commission order under these rules or products traded on linked exchanges. To this end, the Commission is proposing Rule 30.11(g), which would deem products traded on a board of trade that received a Commission order or on a linked exchange to be foreign futures or foreign options, notwithstanding the board of trade's or linked exchange's presence in the U.S.[12] Further, these rules would not expand the boards of trade for which a Rule 30.10 firm may solicit or accept orders beyond those provided in the relevant Commission order issued under rule 30.10 and any confirmation thereof for a particular firm. Thus, if the Commission's order issued under Rule 30.10 permits a firm to solicit or accept orders for products traded on boards of trade in its home country and Countries B and C (but not Country D), the restriction on soliciting or accepting orders for products traded on a board of trade in Country D would remain in effect even if the Country D board of trade were to obtain a section 4(c) exemption order in accordance with Rule 30.11.

The proposed rules would not permit customer use of DESs; however, they would allow customers and their representatives to obtain AORSs and to enter orders via those AORSs. Under the proposal, a customer order for a contract traded on or subject to the rules of an exempted board of trade under proposed Rule 30.11 or a linked exchange that is made via an AORS would be required to be made through a registered FCM or through a Rule 30.10 firm.

The Commission requested comment as to whether it should consider imposing any requirements that would enable it to ensure that board of trade members who would have DESs are *bona fide* members (*i.e.* to ensure that petitioning boards of trade do not create membership categories that do not meaningfully differentiate between traditional ''members'' and ''customers'').[13] In response to this request, one commenter suggested that the Commission should require information concerning a board of trade's membership standards and closely examine those standards to ensure that they are meaningful. Another commenter stated, among other things, that the Commission should not impose formal limits on exchange membership qualifications and that no limitations should be imposed as long as a board of trade primarily operated outside the U.S. does not have special membership categories (*i.e.*, as long as all members have the same rights and obligations).

The Commission has determined to require that petitioners under the proposed rule provide information concerning their membership rules and classes. The information should include any financial requirements (*e.g.*, net worth requirements and fees for

[10] For example, the Commission could decide in the future that a particular class of products should be exempt from some Commission regulations, but that, to the extent such class of products will be traded through automated trading systems, these proposed rules should apply.

[11] Since this term and the requirements applicable thereto would, as recommended by some commenters, apply uniformly and not only to boards of trade primarily operated outside the U.S., the Commission is proposing to define AORS in a new paragraph (tt) of Commission Rule 1.3, which contains the Commission's general definitions.

[12] Consistent with current regulations regarding linked exchanges, Rule 30.10 firms could handle U.S. customer orders for products traded on the linked exchange but not for products traded on the designated contract market to which that exchange is linked.

[13] 63 FR at 39787.

membership) as well as any experience or professional requirements or certifications established by the board of trade. The Commission's proposed rules require that, for customer protection purposes, the trades of U.S. customers on automated trading systems must be intermediated by an FCM or by a Rule 30.10 firm. Accordingly, the Commission wishes to ensure that access to DESs is limited to commodity professionals and large sophisticated users trading their proprietary accounts. The Commission would review the information received concerning a petitioner's membership requirements with a view toward ensuring that the petitioner's membership criteria did not provide a means for avoidance of intermediation for U.S. retail investors. In the event that the commission concluded form the information received that U.S. retail customers could be ''members'' under a particular petitioner's rules and could, therefore, have access to DESs if the Commission were to issue a section 4(c) exemption order to the petitioner, the Commission could refuse to issue such an order or could condition its order accordingly. In the latter regard, the Commission could take into account relevant market structures and financial protections and controls that potentially could serve the same customer protection objectives as professional intermediation.

As technology continues to evolve, the available means to provide direct access from within the U.S. to boards of trade otherwise primarily operating outside the U.S. undoubtedly will further develop. By using broad definitions, the Commission hopes to creates a regulatory approach that provides a flexible means to incorporate the changing nature of technology. The Commission has no desire to dictate particular technology choices to market participants, nor does it wish to restrict innovation, and these rules were crafted accordingly.

B. The Petition Procedure

The Commission's proposal would establish a uniform procedure to enable a board of trade that primarily is operating outside the U.S. to request a Commission order that would permit access, via DESs or AORSs, to the board of trade's products from within the U.S. without requiring the board of trade to be designated as a U.S. contract market. The Commission wishes to emphasize that the proposed rules would not alter a board of trade's obligations to: (a) Receive a no-action position from the Commission prior to authorizing the offer or sale of any stock index futures or options contracts in the U.S. or (b) have any foreign government debt obligation first designated as an ''exempt security'' by the Securities and Exchange Commission (''SEC'') before authorizing the offer or sale of any futures contract or option thereon in the U.S.

The approach set forth for discussion in the concept release envisioned a two-step procedure. Under this approach, a board of trade that primarily is operated outside the U.S. would first petition the Commission for an order that would permit the use of automated trading systems in the U.S. to facilitate trading of the board of trade's products without requiring the board of trade to receive U.S. contract market designation. Next, if the Commission issued an exemptive order to a particular board of trade, a member of that board of trade or an affiliate thereof would be able to make a written request to the National Futures Association (''NFA'') for confirmation to operate under the order.[14]

The concept of a confirmation process was derived from the procedure currently required of Eurex members for their compliance with the Letter. Pursuant to this procedure, if a Eurex member located in the U.S. wishes to install a Eurex terminal in its office, Eurex must make a written filing to the NFA on behalf of that member, including certain information and declarations.

The potential approach set forth in the concept release suggested the possibility of codifying confirmation process similar to that from the Eurex Letter. Although the Commission received few comments regarding the confirmation process, upon reconsideration of this procedure the Commission has determined that such a process is unnecessary. A a simpler alter-native to this procedure, the proposed rules would require only that, as a condition to any section 4(c) exemption order, a board of trade primarily operating outside the U.S. must maintain and provide to the Commission's on a quarterly basis, and at any other time upon request of a Commission representative, a current list that includes (1) the names and main business addresses in the U.S. of its members and affiliates thereof that have DESs in the U.S. indicating which of such persons allow their customers to use AORSs, and (2) the names and main business addresses of its members and affiliates thereof that allow their U.S. customers to use AORSs but who do not have DESs in the U.S.[15] Thus, under the proposed rules, after the Commission issues an exemption order,[16] any member, or affiliate thereof,[17] of the petitioner may take advantage of the Commission's order immediately.[18] Additionally, as discussed below in Section III. B. 3. concerning the use of AORSs, after the Commission issues an order under these rules, any FCM or Rule 30.10 firm may provide U.S. customers with AORSs that provide access to the products of the board of trade that received the Commission order provided that the AORS meets certain minimal requirements and contains certain safeguards.[19]

This release is not intended to alter Commission Rule 30.4 that requires, generally, that a foreign firm be a registered FCM or a Rule 30.10 firm if it solicits or accepts orders for or involving any foreign futures contract or foreign options transaction and, in connection therewith, accepts money, securities or property to margin, guarantee or secure any trades or contracts that result therefrom

[14] 62 FR 47792, 47795 (Sept. 11, 1997)

[15] *See* proposed Rule 30.11(d)(3)(iii).

[16] Proposed Rule 30.3(c) makes clear that a board of trade that primarily operates outside the U.S. that is accessible from a DES in the U.S. must be designated as a U.S. contract market unless it has received a section 4(c) exemption order under Rule 30.11. The Commission believes that this rule is necessary to ensure its ability to enforce proposed Rule 30.11 adequately.

[17] Proposed Rule 30.11(a)(3) defines an affiliate of a board of trade member for purposes of the rule as: (1) A person that owns 50% or more of a member (*e.g.*, a board of trade member's parent company with an ownership interest in the board of trade member of 50% or more); (2) a person owned 50% or more by a member (*e.g.*, a board of trade member's 50%-or-more-owned subsidiary); or (3) a person that is owned by a third person that also owns 50% or more of a member (*e.g.*, a member's sister company where both the member and the sister company are owned 50% or more by a third person).

[18] Because any person who solicits or accepts orders and funds related thereto from U.S. customers for trading pursuant to a Commission order under Rule 30.11 must be registered as an FCM or operate pursuant to an order of exemption under Rule 30.10, the Commission would have appropriate means to discipline such a person for any violation of the Act or rules thereunder relating to the operation of board of trade DESs or AORSs in the U.S.

[19] Proposed Rule 30.3(d) would provide that, except as provided in Rule 30.11, it shall be unlawful for any person to solicit or accept orders for, or to accept money, securities or property in connection with the purchase or sale of, foreign futures or foreign options by a foreign futures or options customer that are placed via an AORS (as defined in proposed Rule 30.11(a)(2) by reference to proposed Rule 1.3(tt)) unless the board of trade through which the transaction will be executed has been designated as a contract market under section 5 of the Act. As noted above proposed Rule 30.11 is not intended to allow Rule 30.10 firms to solicit or to accept orders from U.S. customers to be placed on a U.S. contract Market. To obviate any limitations on the use of AORS by Rule 30.10 firms, Rule 30.11(g) would deem products traded on a board of trade that received a Commission order under Rule 30.11 to be foreign futures or foreign options.

(including where the U.S. person is a nonclearing member of an exempt board of trade trading solely for its own account).[20] The Commission also wishes to make clear that the Commission's issuance of a Rule 30.11 order would not affect the Commission's ability to bring appropriate actions for fraud or manipulation, nor would it alter the obligations of the board of trade that received the order, its members, FCMs or any other persons under applicable provisions of the Act or the Commission's regulations, except as specifically provided in these rules or in a section 4(c) exemption order. For example, an FCM who solicits or accepts orders from U.S. customers for trading on a board of trade exempted under proposed Rule 30.11 or on a linked exchange would remain responsible for complying with the risk disclosure requirements set forth in Rule 30.6 regarding, among other things, the risks associated with trading foreign futures or foreign options contracts.[21]

1. Application Procedure

Paragraph (b) of proposed Rule 30.11 establishes the petition procedure discussed above, whereby a board of trade may petition the Commission for an exemption order under section 4(c) of the Act. Such an order would enable DESs or AORSs that provide access to the board of trade's products to be used in the U.S. without requiring the board of trade to be designated as a contract market.

The approach set forth in the concept release requested comments on six general categories of information that could be included in a petition by a board of trade: (1) General information concerning the petitioner and its products; (2) information concerning the petitioner's rules and regulations, the laws and regulations in effect in the petitioner's home country, and the methods for monitoring compliance therewith; (3) information related to the board of trade's technological system and standards; (4) financial and accounting information; (5) information concerning the ability of U.S. contract markets to operate in the petitioner's home country; and (6) information concerning the petitioner's U.S. activities and presence. The concept release suggested that this information would be used to determine whether a board of trade that is subject to regulation by a foreign regulator and whose primary locus of operations is aboard should be exempt from contract market designation requirements if it places automated trading systems in the U.S. accessing such board of trade.

Commenters generally agreed that the Commission has a legitimate regulatory interest in examining automated boards of trade that are primarily operated abroad, but that nonetheless wish to have a presence in the U.S. by becoming accessible from within the U.S. via computer screens or other automated trading systems. However, some commenters took issue with certain of the specific information included in the categories above, generally based upon concerns regarding the information's relevance or based upon concerns that collection of the information would be unnecessarily duplicative or burdensome. In light of the comments received and the Commissions's own assessment of the information that it believes would be necessary in reviewing a board of trade's petition, the proposed rules provide for a modified set of information that would be required in a petition. Additionally, the proposed rules contain certain provisions that are intended to eliminate the filing of duplicative information.

a. General Approach

At the outset, the Commission wishes to reiterate its general view that it supports technological innovation and does not wish to make it unduly burdensome for U.S. customers to access global future and option markets. The Commission does believe, however, that in order to make the determinations required before it can issue an order under section 4(c) of the Act concerning the public interest, customer protection and its ability to discharge its regulatory duties, the Commission has an obligation to obtain and to review certain basic information. This basic information relates to, among other things, a board of trade's regulatory structure, its automated trading systems, and the extent of its contacts and operations in the U.S. Likewise, in an era where fully computerized exchanges are becoming common, the Commission has an interest in ensuring that operators of these exchanges are not using developments in technology and global communications to evade U.S. regulatory requirements.

Generally, as noted above, section 4(a) of the Act requires that futures and option contracts offered or sold in the U.S. be: (1) Traded on or subject to the rules of a designated contract market; (2) executed or consummated by or through a member of such contract market; and (3) evidenced by a written record that includes the date, the parties and their addresses, the property covered and its price, and the delivery terms. An exception from these requirements is provided for contracts that are made on or subject to the rules of a board of trade located outside of the U.S. or for which the Commission has granted an exemption from the section 4(a) requirements pursuant to section 4(c) of the Act. The Commission believes that, if contracts of a board of trade otherwise primarily operated outside of the U.S. are accessible from within the U.S. via a DES or an AORS, the board of trade is no longer ''located outside of the U.S.'' for purposes of section 4(a) of the Act. The Commission also believes, however, that regulating boards of trade that satisfy the requirements set forth below would be largely duplicative of their home country regulations and unnecessary. Thus, the Commission proposes to establish an exemption process.

Proposed Rule 30.11 would establish a framework for the consideration of petitions for exemption pursuant to section 4(c) of the Act for boards of trade otherwise primarily located outside of the U.S. section 4(c) of the Act requires the Commission to make certain determinations prior to granting an exemption thereunder. In the context of a petition under Rule 30.11, the Commission would be required to determine that: (1) The requirements of Section 4(a) of the Act should not apply to the contracts for which the exemption is requested and the exemption would be consistent with the public interest and the purposes of the Act; (2) the

[20] Commission staff have interpreted this rule to provide an exception if (1) the foreign firm is either a member of the relevant board of trade or is a foreign affiliate of a registered FCM and its *sole* contact with a U.S. customer is that it carries the FCM's customer omnibus account or (2) the foreign firm solely carries accounts on behalf of U.S. customers that are proprietary accounts (as defined in Rule 1.3(y)) of the foreign firm. *See* CFTC Interpretative Letter No. 87–7, Comm. Fut. L. Rep. (CCH) ¶23,972, (Nov. 17, 1987), and CFTC Interpretative Letter No. 88–15, Comm. Fut. L. Rep. (CCH) ¶24,296 (August 10, 1998).

[21] Rule 30.6 refers to Rule 1.55 which requires, among other things, that an FCM provide a risk disclosure statement to each of its customers that provides certain disclosures regarding the risks associated with trading in commodity futures contracts. Paragraphs (b) (7) and (8) of Rule 1.55 contain required language specifically related to risks concerning trading in foreign futures and foreign options. In particular, paragraph (b)(7) requires disclosure that, because ''[n]o domestic organization regulates the activities of a foreign exchange . . .'', customers who trade on these exchanges may not be afforded the same protections (*e.g.*, protections regarding the safety of margin funds) that may apply to domestic transactions. Rules 4.24 and 4.34 require similar risk disclosure language to be provided by commodity pool operators and commodity trading advisors to their customers if the offered pool may trade in foreign futures or foreign options contracts or the offered trading program permits the trading of foreign futures or foreign option. *See also* Rule 30.6, *as proposed to be amended by* 64 FR 1566 (Jan. 11, 1999).

contracts will be entered into solely between appropriate persons; and (3) the contracts will not have a material adverse effect on the ability of the Commission or any contract market to discharge its regulatory or self-regulatory duties under the Act. As noted above, the standards that will guide the Commission in determining whether a petitioner meets the requirements under section 4(c) of the Act are that: (1) The petitioner is an established board of trade that wishes to place within the United States an automated trading system permitting access to its products but whose activities are otherwise primarily located in a particular foreign country that has taken responsibility for regulation of the petitioner; (2) the petitioner's home country has established a regulatory scheme that is generally comparable to that in the U.S. and provides basic protections for customers trading on markets and for the integrity of the markets themselves; (3) except for certain incidental contacts with the U.S. the petitioner is present in the U.S. only by virtue of being accessible from within the U.S. via its automated trading system; (4) the petitioner is willing to submit itself to the jurisdiction of the Commission and the U.S. courts in connection with its activities conducted under an exemptive order; (5) the petitioner's automated trading system has been approved by the petitioner's home country regulator following a review of the system that applied the standards set forth in the 1990 International Organization of Securities Commissions (''IOSCO'') report on screen-based trading systems (as may be revised and updated from time-to-time) or substantially similar standards; and (6) satisfactory information sharing arrangements are in effect between the Commission and the petitioner and petitioner's regulatory authority.

b. Statutory Standards for Exemptive Relief under Section 4(c)

As noted above, section 4(c) of the act provides the Commission with authority ''by rule, regulation or order'' to exempt ''any agreement, contract or transaction'' from any of the requirements of section 4(a) of the Act, if the Commission determines that the exemption would be consistent with the public interest and that the contracts would be entered into solely by appropriate persons and would not have a material adverse effect on the ability of the Commission or any contract market to discharge its regulatory or self-regulatory duties under the Act.

As discussed more fully below, the Commission has crafted standards to apply in evaluating exemptive petitions under the proposed rules that will enable it to make the requisite findings under section 4(c) if appropriate. If a petitioner is subject to a regulatory structure in its home jurisdiction that the Commission finds to be generally comparable to that in the U.S. in terms of protecting customers and the integrity of markets, as well as meeting IOSCO standards or similar standards for screen-based trading, and finds that the regulator in that other jurisdiction monitors and enforces compliance with that regulatory structure, the Commission appropriately can determine that automated trading by U.S. customers pursuant to that foreign regulatory structure is consistent with the public interest and the purposes of that Act. the Commission appropriately could permit anyone who can participate in contract market transactions to be deemed to be an ''appropriate person'' for such automated trading and thus to be eligible to participate in the petitioner's markets. Further, the various provisions that the Commission would establish under Rule 30.11 with regard to information sharing arrangements (access to books and records, notice of enforcement or disciplinary actions and notice of default, insolvency or bankruptcy), the petitioner's appointment of an agent for service of process and consent to U.S. jurisdiction, the Commission's retention of antifraud authority concerning these transactions, as well as the limitations on the petitioner's U.S. presence to DESs or AORSs that provide access to its products and incidental U.S. contacts, would provide a basis for the Commission to determine that granting the petition would not have a material adverse effect on the ability of the Commission or any contract market to discharge its regulatory duties under the Act. A more detailed description of the requirements for a petition follows.

c. Foreign Regulatory Requirements

The Commission believes that the establishment of automate trading systems in the U.S. that provide rapid and proximate access to boards of trade otherwise primarily located outside the U.S. will cause a fundamental change in the nature of global trading and raise substantial issues regarding the regulation of increasingly international or multinational exchanges. Thus, the Commission believes that one essential factor in determining whether an automated board of trade that wishes to establish trading systems in the U.S. should be exempt from contract market designation is whether such board of trade is subject to a *bona fide* regulatory system *i.e.*, a structure that is generally comparable to that in the U.S. in terms of customer protections and market integrity and that is adequately monitored and supervised by a foreign futures authority.

To assist the Commission in making the required determinations under Section 4(c) of the Act and the judgments concerning the general standards set forth above, the Commission is proposing that a petitioners submit certain information. With respect to whether the petitioner is an established board of trade primarily operating outside the U.S., the petitioners would be required to include the following basic business information: (1) The address of the petitioner's main business office and the name, address, telephone number, facsimile number and electronic mail address of a person to contact for additional information concerning the petition; (2) the petitioner's articles of association, constitution, or other similar organizational documents along with the date and place of its establishment; (3) the name and address of the petitioner's home country regulatory; and (4) a complete description of the contracts that initially would be traded through DESs and/or AORSs located in the U.S.[22]

In order for a petitioner to be eligible for an exemption, petitioner's home country regulatory regime should be generally comparable to that in the U.S. in providing for: (A) Prohibition of fraud, abuse and market manipulation relating to trading on the petitioner's markets; (B) recordkeeping and reporting by the petitioners and its members; (C) fitness standards for intermediaries operating on petitioner's markets, members or others; (D) financial standards for the petitioner's members; (E) protection of customer funds, including procedures in the event of a clearing member's default or insolvency; (F) trade practice standards; (G) rule review or general review of board of trade operations by its regulatory authority; (H) surveillance, compliance, and enforcement mechanisms employed by the board of trade and its regulatory authority to ensure compliance with their rules and regulations; and (I) regulatory oversight of clearing facilities.[23] Information concerning the petitioner's rules, including its membership rules, the laws and regulations of the home

[22] Proposed Rule 30.11(b)(2)(i)–(iii).

[23] Proposed Rule 30.11(b)(2)(iv)–(vi).

country applicable to the petitions and its operations, and the mechanisms available for ensuring compliance with all such rules, laws and regulations should be provided in the petition. The Commission would review such information in order to determine whether it is consistent with the public interest, customer protection and its ability to discharge its regulatory duties to issue an order under section 4(c) of the Act to permit U.S. customer access to petitioner's products from automated systems within the U.S.

In response to the Commission's request for comment concerning ways to avoid the filing of unnecessarily duplicative information with the Commission, several commenters argued that, if a petitioner or its regulator has received an exemption from the Commission pursuant to Commission Rule 30.10, the petitioner should not be required to submit duplicative information to the Commission. The Commission agrees that, if a petitioner or a regulatory authority that governs the petitioner has received an exemption under Rule 30.30, the Commission may already have received much of the information referred to above. Accordingly, the proposed rules provide that, in such a case, a petitioner would not be required to submit its organizational documents, its current rules, and the information concerning the regulatory scheme in the petitioner's home country, if such information was provided to the Commission as a basis for the Rule 30.10 exemptive order and remains the same in all material respects and if the petitioner provides a statement in its petition to this effect that also specifies the date(s) the information was provided and the name of the petitioner who received the Rule 30.10 order.[24] Such a petitioner, however, would be required to provide all other information set forth in the rules unless a particular provision of the rules provides to the contrary. It should be noted that it is only where the information as to a *particular* board of trade's regulatory and self-regulatory program has previously been provided to the Commission under Rule 30.10 that a petitioner under Rule 30.11 need not provide all required information. Only where provision of information would, in fact, be duplicative may a petitioner rely on information provided in a prior Rule 30.10 application.[25]

The Commission wishes to emphasize that it remains very concerned about, and committed to, the protection of the positions and funds of U.S. customers who trade on boards of trade whose primary locus of operations is outside the U.S. Any U.S. customer who trades on such boards of trade may face additional risks, as various Commission-mandated risk disclosure statements make clear. There may also be an impact even on customers who do not themselves trade on such boards of trade, but have their accounts carried at FCMs that clear trades for other customers who do. The recent financial failure of Griffin Trading Company has heightened the Commission's concern in this area. Although the Commission recognizes that the events leading to Griffin's insolvency began on automated trading systems outside of the U.S., the Commission believes that this incident should serve as a reminder of the importance of establishing and enforcing trading and credit limits, rules to address the insolvency of intermediaries, and methods to transfer accounts of non-defaulting customers when there is a customer default. The protection of customer funds remains one of the Commission's major goals in its regulatory regime.

In light of the issues raised by the failure of Griffin, the Commission is considering the appropriateness of adopting a provision, in connection with its rules concerning automated trading systems, that would require that the automated order matching/execution system of contract markets, linked exchanges or boards of trade operating pursuant to proposed Rule 30.11 exemption orders have the ability to provide pre-execution credit and trading or position limit screening. The Commission's intention would be to insure that DESs could not be used to execute trades in violation of give-up or clearing agreements with credit and trading or positions limits. (This is to be distinguished from the trading or credit checks performed by FCMs' or Rule 30.10 firms' AORSs.) The Commission is not including such a requirement in these proposed rules, but requests comment on the appropriateness of such a requirement.

d. Technological Systems and Standards

The Commission's concept release also requested comment concerning what information should be requested regarding the technological systems and standards related to a petitioner's automated trading systems. The concept release suggested that this information could include a discussion of the petitioner's order processing system and its system integrity and architecture. Commenters varied in their suggested approaches to this issue. One commenter stated that petitioners should be required to provide information concerning their home country regulator's technological standards and suggested, by example, that a petitioner be required to specify whether such regulator has adopted the principles for screen-based trading set forth by IOSCO.[26] Another commenter suggested that the Commission's rules should not require any review or inquiry concerning the technological features of a petitioner's systems unless special circumstances warrant such attention. This commenter stated further that, if the home country regulator has satisfied itself that a trading system meets or surpasses the standards set forth by IOSCO in its report, no purpose is served by the Commission requiring any further demonstration of compliance by the petitioner.

The Commission believes it is generally appropriate to respect the judgment of home country regulators in these matters and does not wish to conduct a *de novo* review of the technological decisions made by petitioning boards of trade. However, the Commission also believes that it has an obligation to assure that any system that will be accessed from within the U.S. is sufficiently sound (*e.g.*, its architecture is sufficient to handle reliably the type and volume of transactions reasonably anticipated) and secure and provides fair access to U.S.

[24] *See* proviso to proposed Rule 30.11(b)(2)(vi).

[25] If a petitioner is aware that another board of trade in its home jurisdiction has recently provided information to the Commission in a petition that, in fact, duplicates specific information that would be required in the petitioner's petition, the petitioner may, in its petition, request that it not be required to include such duplicative information.

[26] These principles address the following topics:

1. Compliance with applicable legal standards, regulatory policies, and/or market custom or practice where relevant;
2. The equitable availability of accurate and timely trade and quotation information;
3. The order execution algorithm used by the system;
4. Technical operation of the system that is equitable to all market participants;
5. Periodic objective risk assessment of the system and system interfaces;
6. Procedures to ensure the competence, integrity, and authority of system users and to ensure fair access to the system;
7. Consideration of any additional risk management exposures pertinent to the system;
8. Mechanisms to ensure that the information necessary to conduct adequate surveillance of the system for supervisory and enforcement purposes is available;
9. Adequacy of risk disclosure, including system liability; and
10. Procedures to ensure that the system sponsor, providers, and users are aware of, and will be responsive to, relevant regulatory authorities.

See IOSCO report entitled ''Screen-Based Trading Systems for Derivative Products'' (June 1990).

customers on a nondiscriminatory basis (*i.e.*, U.S. customers are not placed at a competitive disadvantage to others trading on the system). These assurances are necessary in order for the Commission to determine that issuance of a section 4(c) exemption order would not be contrary to the public interest, would serve to ensure protection of U.S. customers and would not adversely affect the Commission's ability to discharge its regulatory duties.

To address these concerns and the recommendations of commenters, the proposed rules would require that a petitioner state in detail in its petition the extent to which a technical review of the system at issue was performed by its home country regulator and identify the standards applied in that review. The petitioner would include a copy of any order or certification received from its home country regulator as a result of such review. If the home country regulator based its approval on a review conducted by a third-party, the petitioner should so indicate and discuss the qualifications of the party that performed the review and the standards applied.

The petition would also be required to include a general description of the automated trading system operated by the board of trade, including at a minimum a general description of the architecture and security features of the system, information as to the length of time the particular system has been operating and a history of significant system failures or interruptions.[27] Depending upon the nature of the technical review performed and the information received concerning the system's operating history, the Commission would determine what additional inquiry, if any, by the Commission is necessary and appropriate in reviewing the petitioner's request. The Commission adopted the IOSCO 1990 Principles on Screen-Based Trading as a formal Commission statement of regulatory policy and would use the IOSCO principles as guidelines for its review to determine whether the petitioner's automated system technology is sufficient to permit the Commission to issue a section 4(c) exemption order.[28] In this regard, the petitioner would be required to describe any differences between the IOSCO principles and those that were used to perform the technical review.

To the extent that the information to be provided to the Commission would be the same for several boards of trade using a shared computer or for a board of trade that lists its products on another board of trade's automated trading system, only one of the boards of trade using the system or making its products available on such system in the U.S. would be required to provide the information regarding technological systems and standards. If a petitioner shares a computer system or platform with another board of trade that has not sought an exemption order and the petitioner has relied on the system analysis performed by the other board of trade's home country regulator, it would not be sufficient for the petitioner simply to state that it relied on such analysis. Rather, the petitioner would be responsible for obtaining and providing the Commission with information concerning the analysis performed by the other board of trade's home country regulator and for describing whether such analysis was consistent with the IOSCO principles. Additionally, if a board of trade does not include all or a portion of the information regarding the type of review that was performed on its system because the information has been or is being provided by another board of trade, the petitioner must include a statement to that effect in its petition and must identify the board of trade that has provided or is providing the information.

e. U.S. Activities

Another possible information requirement outlined in the concept release concerned the petitioner's activities in the U.S. The concept release requested comment on whether to require a petitioner to provide information concerning its marketing, education, promotional or other activities in the U.S. including the address of, and number of persons employed by, any office maintained by the petitioner in the U.S., and the extent to which the board of trade makes information available on the Internet that may be relvevant to U.S. customers who wish to trade its products. Additionally, if the petitioner maintains a warehouse in the U.S. for any futures contracts that could involve physical delivery of the underlying commodity, the concept release suggested that the petitioner should provide the address for such warehouse and the stocks contain as of the date of the petition.

Commenters generally agreed that the Commission has a legitimate interest in obtaining information to determine whether a board of trade's presence in the United States is more than incidental such that the board of trade should be required to obtain contract market designation. The Commission has determined to propose generally the submission of the information discussed in the concept release concerning a petitioner's U.S. activities.[29] To qualify for an exemption order, petitioner's management, back office operations, order matching/execution facilities and clearing facilities would have to be located outside the U.S., as would all or the vast majority of its personnel. The presence of an office or offices in the U.S. might or might not be deemed to be incidental contact, depending on the size, purpose, and activities conducted by the office(s). The Commission will evaluate this issue based on the facts described in the petition.

One commenter questioned the relevance of information concerning the address of warehouses in the U.S. and the stocks available at such warehouses. The Commission believes that the location of the underlying cash market and delivery points with respect to products traded through U.S.-located automated trading systems is a pertinent factor in examining the nature and extent of an exchange's activities in the U.S. Presence in the U.S. of some warehouse facilities would not itself render a petitioner ineligible for relief under these rules. Eligibility would depend on the nature of petitioner's U.S. activities taken as a whole.[30]

f. Rules Concerning Access by U.S. Exchanges to Foreign Markets

The concept release also requested comment on whether the Commission should require that the petitioner provide a statement from the regulatory authority in its home country with primary responsibility for oversight of the petitioner as to whether such regulator or any other body in that country imposes any restrictions or regulations regarding: (1) The placement or operation of U.S. exchange automated trading systems in the country; (2) the types of products permitted to be traded on such systems; and (3) the sale of U.S. exchange products, generally. If any such restrictions or regulations existed, the concept release suggested that the statement include a description of the restrictions or regulations, copies of any relevant statutes or other relevant legal

[27] *See* proposed rule 30.11(b)(2)(viii).

[28] 55 FR 48670 (Nov. 21, 1990). IOSCO is currently undertaking a study to review the principles set forth in its 1990 report in light of new technological developments.

[29] *See* proposed Rule 30.11(b)(2)(ix)–(xi).

[30] The proposed rules require petitioners to identify the addresses of any warehouses maintained in the U.S. for delivery of underlying commodities, but not to specify the stocks on hand at such warehouses. If a petition is granted, an exempted exchange must respond to any Commission requests for information about such stocks. *See* proposed Rule 30.11(d)(8).

materials and a description of the application process, if any, required for a U.S. exchange and its members to place automated trading systems and/or to sell products in the petitioner's home country.

Commenters generally were in favor of the Commission's collection of the information described above as a means of ensuring electronic access to markets globally. Commenters differed, however, regarding the role such information should have in the Commission's ultimate determination as to whether it should issue an order. Several commenters stated that an order should not be issued to a board of trade primarily located outside the U.S. unless similar electronic access is made available to U.S. exchanges by the board of trade's home country regulator. Other commenters warned that the Commission should not use the request for information concerning the electronic access rules of the petitioner's home country as a means to require, as a prerequisite to issuing an order, that a particular regulatory framework for allowing U.S. exchanges to place automated trading systems in the foreign jurisdiction be in effect in a foreign jurisdiction. Two commenters believed that the Commission should collect information concerning a foreign jurisdiction's rules and policies vis-a-vis a U.S. contract market's ability to place automated trading systems in the foreign jurisdiction, but should not deny electronic access to a board of trade solely on the basis that its home jurisdiction excludes the systems of U.S. exchanges. Rather, these commenters believed that the information should be considered as one element in the Commission's assessment of the entire petition. Another commenter stated its view that the issue of reciprocity should not be a significant factor in the Commission's determination as to whether to issue an exemption order because financial institutions in a country that does not provide electronic access ultimately will be harmed by such a policy, thus effectively forcing the country into developing regulations permitting access. One commenter also noted that any Commission regulations must be consistent with U.S. obligations under the General Agreement on Trade in Services (''GATS'') and any applicable annexes thereto.

With respect to the GATS, Commission staff have held discussions with staff of the U.S. Department of Treasury (''Treasury'') and the Office of the U.S. Trade Representative (''USTR'') on this issue. Treasury and USTR staff have expressed to Commission staff their view that the Commission may not condition granting an order on reciprocity by the petitioner's home country without violating U.S. legal obligations under the GATS and North American Free Trade Agreement (NAFTA). Indeed, they have expressed concern that even a request for information such as that set forth in the concept release and described above might raise questions relating to U.S. obligations under the GATS and NAFTA.

In light of Treasury's and USTR's view regarding U.S. legal obligations under the GATS and NAFTA, the Commission is not now proposing to impose a requirement that a particular partitioner's home country jurisdiction extend reciprocity to U.S. exchanges' automated trading systems, even though it had intended to do so. The Commission would welcome comment on this issue. Even if U.S. international obligations prevent the Commission from requiring reciprocity, the Commission strongly supports a policy of open and free access to global markets and is committed to aiding U.S. exchanges in gaining the right to place electronic systems in foreign jurisdictions. The Commission encourages any U.S. exchange that believes that it is being wrongfully prevented from placing its automated trading systems in foreign jurisdiction to inform the Commission of this concern. The Commission will work with the exchange, with the foreign jurisdiction, and with Treasury and/or USTR as appropriate to open such jurisdiction to U.S. exchanges and to resolve any dispute over unfair restrictions placed on U.S. exchanges.

g. Financial Information and Volume Data

The concept release requested comment on a requirement to include in a petition the petitioner's most recent annual financial statements and the total trading volume, on a contract-by-contract basis and in the aggregate, for its most recent year and most recent quarter (or other period if data is not maintained on an annual and quarterly basis). Based upon the concerns of commenters regarding the relevance of the financial statements, the fact that the Commission does not require similar statements from contract markets and the fact that the Commission will review the minimum financial standards and clearing facility oversight in the petitioner's home country, the Commission has determined not to require financial statements from the petitioner in the proposed rules. Neither will the Commission require volume figures in a petition under Proposed Rule 30.11. The proposed rules, however, would require certain basic U.S. volume data to be reported to the Commission on a quarterly basis as a condition of a section 4(c) exemption order.[31]

h. Information Sharing

The prevention of fraud and the protection of U.S. customers, including customer funds, remain major goals of the Commission's regulatory scheme. The Commission's ability to access information regarding trading by persons located in the U.S. that is conducted on a board of trade exempted under proposed Rule 30.11 is essential to achieving these goals. The concept release requested comment on a requirement that a petitioner identify any information sharing arrangement in effect among the relevant regulatory authorities and the Commission, including information concerning any blocking statutes or data protection laws in effect in the petitioner's home country that might impair the Commission's ability to obtain information under such arrangements. The commission has determined that the existence of satisfactory information sharing arrangements between the petitioner and the petitioner's regulator and the Commission is an essential prerequisite for an exemptive order under the proposed rules. Under such arrangements, the Commission and the petitioner and the petitioner's regulatory authority would agree to cooperate with respect to inquiries concerning trading on the petitioner's markets that affects U.S. persons or markets. Relevant information to be provided under such arrangements may include, without limitation, trade confirmation data, data necessary to trace funds related to trading futures and option products subject to regulation in the petitioner's home country, position data, data on a firm's standing to do business in the petitioner's home country, and a firm's financial condition. Mechanisms for cooperating with the Commission and the NFA in inquiries, compliance matters, investigations and enforcement proceedings must be established in the information sharing arrangements. Failure to maintain satisfactory information sharing arrangements could result in revocation of the Commission's order. Proposed Rule 30.11(d)(8) also provides that the Commission may seek information directly from the petitioner to evaluate the petitioner's continued eligibility for or compliance with the

[31] *See* discussion of conditions of an order in Section III.B.2., below.

conditions of a section 4(c) exemption or for any other reason.

i. Arrangements Among Multiple Exchanges

The Commission envisions that its proposed rules would apply not only with respect to individual boards of trade that primarily are operated outside the U.S., but also in circumstances where the products of multiple boards of trade are traded through a single system. In such a case, each board of trade whose products would be made available through U.S.-located automated trading systems generally would be required to comply with the requirements set forth in the proposed rules. For example, if two or more boards of trade share the same system and each wishes to place DESs in the U.S. for its members' (or members' affiliates') use, each would be required to receive an order from the Commission prior to such placement. Similarly, if the products of one or more boards of trade are available through the DES of another board of trade, each board of trade whose products would be available in the U.S. through such DES would be required to receive a section 4(c) exemption order. With respect to AORSs that provide U.S. customers with access to the products of multiple boards of trade, each board of trade whose products would be available through such device or software would have to comply with the rules and receive a section 4(c) exemption order before an FCM or a Rule 30.10 firm could allow its customers to enter trades on the board of trade via an AORS. In the examples discussed above, a petition to the Commission under the proposed rules could be made individually by each board of trade or jointly, provided that the Commission received all required information under the proposed rules with respect to each board of trade whose products would be made available electronically from within the U.S.

In addition to the foregoing, the Commission appreciates that some boards of trade currently allow automated trading of their products from within the U.S. through mutual arrangements with designated contract markets or may in the future do so. In these cases, the arrangements are submitted to the Commission for its prior review as rule changes of the contract market. Because the Commission thus has the opportunity to examine each such arrangement, the proposed rules carve out an exception that would allow a board of trade primarily operating outside the U.S. to have its products traded through automated trading systems located in the U.S. without obtaining contract market designation and without receiving a section 4(c) exemption order if (1) the board of trade has entered into an electronic trading arrangement with a designated contract market which is submitted to the Commission for review and is in effect as a rule of the contract market and (2) the products of the board of trade that are traded in the U.S. through such trading systems are traded in accordance with such an arrangement. However, a board of trade that has entered into an electronic trading arrangement with a designated contract market would be required to receive a Commission order pursuant to these proposed rules if the board of trade planned to allow automated access to its products in any manner that would fall *outside* the arrangement with a U.S. contract market that has been submitted to the Commission for review.

The Commission wishes to emphasize that, although a ''linked exchange'' would not be required to comply with these proposed rules if access to its products via automated trading systems from within the U.S. is limited to the terms of an arrangement with a designated contract market, a designated contract market that enters into such a linkage arrangement must submit a rule(s) describing the arrangement and the attendant rights and responsibilities of all parties involved in the arrangement to the Commission for approval. In reviewing such a rule submission, the Commission has applied and will continue to apply substantially the same standards as set forth herein modified as appropriate based on the exact nature of the linkage arrangement. Among other things, the Commission seeks assurances from the designated contract market that the arrangement will conform with the principles for screen-based trading set forth by IOSCO [32] and evaluates what role the U.S. contract market would have in securing its members' compliance with the rules of the board of trade operating primarily outside the U.S. Additionally, the Commission will ensure that any rule(s) it reviews includes language requiring such a board of trade to subject itself to the jurisdiction of the Commission and U.S. courts regarding its activities under the linkage arrangement.

j. Public Availability of Petitions

The concept release asked for comment on whether petitions received should routinely be published in the **Federal Register** for public comment. After reviewing the comments and in light of the nature of the petition process that would be established by the proposed rules, the Commission believes that, as a general matter, it would be beneficial to provide public notice of petitions. Accordingly, pursuant to section 4(c) of the Act, paragraph (e) of proposed Rule 30.11 provides that the Commission will publish a ''notice of availability'' in the **Federal Register** upon receipt of any petition. The notice of availability would contain a general description of the information discussed in the petition and the exemption sought by the petitioner. Interested parties would thus be aware of each petition and would have the opportunity to request information concerning the petition from the Secretariat of the Commission. The proposed rule further provides that the Commission may, upon the request of a petitioner, limit the public availability of information included in its petition if the Commission determines that such information constitutes a trade secret or that public disclosure would result in material competitive harm to the petitioner.

2. Conditions of an Order

If all standards for exemptive relief are met, exemptive orders under proposed Rule 30.11 would be issued subject to certain conditions. The concept release set forth a number of potential conditions that would be included in each Commission order. The Commission believes that it generally would be helpful to go further and provide in its rules a list of conditions that will apply automatically to each Commission order, unless a particular order indicates otherwise. In light of the comments received on the concept release, the Commission is proposing conditions that vary in certain respects from those discussed in the concept release. These conditions are intended to aid the Commission to fulfill certain basic goals of its rulemaking: (1) To ensure protections for U.S. customers and (2) to ensure that the Commission has ongoing access to data to ensure the continued appropriateness of the Commission's 4(c) exemption order. The conditions that are proposed to be included automatically in each Commission order are as follows:

1. Only memebers of the board of trade that received a Commission exemptive order and their affiliates may have access to DESs, and the board of trade will not provide, and will take reasonable steps to prevent third parties from providing DESs to any other persons;

[32] *See supra* note 26.

2. Unless otherwise exempt from registration, any member or affiliate thereof that solicits or accepts orders for, or accepts money, securities or property in connection with the purchase or sale of, foreign futures or foreign options by a foreign futures or foreign options customer via a DES or an AORS must be a registered FCM or a Rule 30.10 firm;

3. The board of trade that received the exemptive order must notify the Commission in writing within 30 calendar days of (a) any material changes in the information provided in its petition to the Commission and any changes in its rules or in the laws or rules of its home country that may have a material impact on the order, (b) any known violation by a member (or its affiliate) of the Commission's order; and (c) any disciplinary action taken against a member (or its affiliate that involves any market manipulation, fraud, deceit or conversion or that results in the member's suspension or expulsion [33] and that involves the use of a DES or an AORS in the U.S., *provided, however,* that the board of trade must notify the Commission at least ten business days prior to allowing any new products (*i.e.,* products other than those discussed in its petition) to be traded through DESs or AORSs located in the U.S. and within 24 hours of any significant system failure or interruption or a member's default, insolvency or bankruptcy; [34]

4. Satisfactory information sharing arrangements must remain in effect between the Commission and the petitioner and the petitioner's regulatory authority;

5. The board of trade that received the order must provide to the Comission, on a quarterly basis and at any other time upon the request of a Commission representative, a current list that (a) identifies and provides the main business addresses in the United States for those of its members and affiliates thereof that have DESs in the United States and indicates which of such members and affiliates thereof allow the use of AORSs by foreign futures and foreign options customers and (b) identifies and provides the main business addresses for those of its members and affiliates thereof that allow the use of AORSs by foreign futures and foreign options customers, but who do not have DESs in the U.S.;

6. Prior to operating pursuant to the Commission order, the board of trade that received the order must file with the Commission, and maintain thereafter as long as it operates pursuant to the order, a valid and binding appointment of an agent for service of process in the United States, pursuant to which such agent is authorized to accept delivery and service of communications issued by or on behalf of the Commission, the Department of Justice, any member of the board of trade or affiliate of such member, or any foreign futures or foreign options customer. Service or delivery of any communication issued by or on behalf of any of the foregoing, pursuant to such appointment, shall constitute valid and effective service or delivery.

7. Prior to operating pursuant to the Commission order, the board of trade that received the order must file with the Commission a written representation, executed by someone with authority to bind the board of trade, stating that, as long as the board of trade operates pursuant to the order, the board of trade irrevocably agrees to and submits to the jurisdiction of the Commission and state and federal courts in the United States with respect to the board of trade's activities conducted under the exemption order; and

8. The board of trade that received the order must provide the Commission with quarterly reports indicating with respect to each contract available to be traded from within the U.S. via DESs or AORSs (a) the total volume originating from DESs or AORSs located in the U.S. and (b) the total worldwide trade volume on the board of trade. If applicable, the board of trade also must provide reports upon request indicating the stocks held at any warehouse maintained by it in the U.S. for products that require physical delivery.

A significant issue raised in the concept release concerned the extent to which the Commission should look to the volume of a petitioner's contracts transacted by U.S. persons in determining whether such petitioner should be issued an exemption order under these proposed rules. The majority (although not all) of the commenters on this issue believed that the Commission should not use a volume test as the sole means to determine whether a board of trade should be eligible for a Commission order. Commenters varied, however, in their views as to the extent, if any, to which U.S. volume data should play a role in this determination. The Commission agrees with those commenters who suggested that adopting a particular percentage of volume within the U.S. beyond which a board of trade would be required to receive contract market designation could serve to inhibit the development of new products that might appeal to U.S. users and could prove difficult to manage because volume potentially can vary greatly from one reporting period to the next. Thus, the Commission is not proposing any fixed percentage. However, the Commission believes that trade volume from within the U.S. is relevant in assessing whether a board of trade's contacts in the U.S. are so extensive that it should be required to be designated as a contract market and that a quarterely report that indicates a board of trade's volume of U.S. transactions in each contract and the total number of transactions worldwide in each contract would be beneficial to the Commission in obtaining a complete picture of the board of trade's U.S. activities. Accordingly, the Commission has determined to include in its proposal a periodic U.S. volume reporting requirement that would be included as a condition to each order issued under the proposed rules. The Commission believes that the volume data that would be required under the proposed rules, while relevant and helpful to the Commission, should not impose a significant burden. Specifically, as noted above, the proposed rules would require that a board of trade that received a Commission order provide a report to the Commission on a quarterly basis that indicates the total volume in each of its contracts that originates from automated trading systems in the U.S. (whether from DESs or AORSs) and the total volume of transactions in such contracts worldwide (including the U.S.). This information would be provided for each contract traded on DESs or AORSs from within the U.S.

Another issue raised in the concept release concerned a potential requirement for a biennial on-site review of the operations of members (and their affiliates) operating in the U.S. under a Commission order. The Commission has determined not to require a separate on-site review. As one commenter pointed out, any member or affiliate thereof that uses a DES to trade on behalf of U.S. customers pursuant to a Commission issued order would have to be registered as an FCM and would be subject to periodic audits by the Commission and its designated self-regulatory organization (''DSRO'') (*i.e.,* U.S. contract market or NFA). The Commission does not believe that it is necessary to require an additional review under these rules. Rather, it anticipates that the DSRO's audit procedures would be extended to encompass a review of compliance with the Commission's new rules, and orders

[33] *See, e.g.,* Rule 1.63(a)(6)(ii) (defining disciplinary offense for purposes of the Commission's rule concerning service on SRO governing boards by persons with disciplinary histories to include any violation of SRO rules that involves fraud, deceit or conversion or results in suspension or expulsion).

[34] Although the proposed rules would require that the Commission be notified if a board of trade operating under an exemption order intends to allow automated access to new products through DESs or AORSs located in the U.S., the proposed rules generally would not require any type of pre-approval process. However, as previously noted, the proposed rules would not alter a board of trade's obligations: (a) To receive a no-action position from the Commission prior to engaging in the offer or sale of any stock index futures or option contracts in the U.S. or (b) to have any foreign government debt obligation designated as an ''exempt security'' by the SEC before engaging in the offer or sale of any futures contract or option thereon in the U.S. section 2(a)(1)(B)(v) of the Act states generally that no person shall offer or enter into a contract of sale for future delivery of any security except an ''exempt security'' under Section 3 of the Securities Act of 1933 or section 3(a)(12) of the Securities Exchange Act of 1934.

issued thereunder, when adopted and issued.

The Commission wishes to make clear that the above list of conditions that will automatically apply under the proposal would not necessarily be exhaustive. For clarity's sake, each order likely would reiterate the conditions that are imposed automatically by the rules. However, as the rules state, the ''default'' or automatic conditions would apply even if not contained in an order, unless explicitly excluded therefrom. Additionally, a petitioner must include in its petition a written statement in which it consents to or agrees to comply with each of the conditions should the Commission issue the petitioner a Rule 30.11 exemption order.[35] Thus, consent or agreement to comply with the conditions also would be a prerequisite to the Commission's issuance of an order under these rules.

The Commission would be free to subject any order to other conditions that the Commission believes to be necessary or appropriate. In addition, under paragraph (f) of proposed Rule 30.11, the Commission would retain the authority to condition further, modify, suspend, terminate or otherwise restrict the terms of an order as they apply either to a specific person operating thereunder or to the order in its entirety. The Commission might determine to take such action, for example, if the Commission found that the board of trade that received the order, or an entity operating in the U.S. based on the order, materially violated a stated condition of the order, that the activities, operations and trading of the board of trade that received the order no longer justified the order, or that continuation of the order otherwise would be contrary to the Act, public policy or the public interest.

3. Rules Concerning Automated Order Routing Systems

a. AORS Definition

As noted above, the Commission is proposing to adopt a definition of the term ''automated order routing system'' in a new paragraph (tt) of Commission Rule 1.3, which contains the Commission's general definitions and thus would apply to U.S. designated contract markets in addition to boards of trade granted a Commission order under proposed Rule 30.11 and linked exchanges. The definition of an AORS is any system of computers, software or other devices that allows entry of orders through another party for transmission to a board of trade's computer or other automated device where, without substantial human intervention, trade matching or excution takes place. ''Entry of orders'' for an AORS could be via a screen-based or other automated system. A customer who telephones an order to an employee of an FCM or Rule 30.10 firm would not be *entering* an order for purposes of these rules, and the AORS definition would not apply. The definition of AORS and the requirements relating thereto would apply to orders *for* and customer or foreign futures or options customer, although order entry itself could be made by the customer *or* by a person designated by the customer to enter orders on its behalf, *e.g.*, a CTA.

As described more fully below, under Proposed Rule 1.71(a), if a customer or foreign futures or foreign options customer uses an AORS to transmit an order to an FCM or Rule 30.10 firm, such AORS must be a ''qualified'' AORS and satisfy certain minimum requirements specified in proposed rule 1.71(b). Further, under proposed rule 30.3 (d), AORSs can only be used to access designated contract markets, boards of trade that have received an exemption under Proposed Rule 30.11 or linked exchanges.

The qualification requirements of Proposed Rule 1.71 do not apply to orders transmitted via an AORS if such orders are proprietary orders of the receiving firm, of if they are transmitted by a registered FCM to another firm for any proprietary account or customer omnibus account of the FCM. Systems transmitting such orders still fall within the definition of AORS, however, and therefore Proposed Rule 30.3(d) requires that such orders be directed to a contract market, a Rule 30.11 exempt board of trade or a linked exchange.

There are a number of possible permutations in how a particular order may be transmitted from a customer or an FCM for eventual execution on an automated board of trade, and it is important to examine each step of a particular transaction to determine what requirements apply. For example, if a customer telephoned an order to an employee of a U.S. FCM, who then entered the order into a system linked directly to an automated board of trade of which it was member, the second step of the transaction would involve the use of a DES, and under proposed Rule 30.3(c), the board of trade for which the order was placed must be a designated contract market, a Rule 30.11 exempt board of trade, or a linked exchange. If the same customer used a system that satisfied the definition of an AORS to send an order to an FCM (or Rule 30.10 firm) for transmission to an automated board of trade, such AORS would have to be a qualified AORS and satisfy the requirements of Proposed rule 1.71(b). Under proposed Rule 30.3(d), the board of trade for which the order was placed would have to be a designated contract market, a Rule 30.11 exempt board of trade, or a linked exchange.

If a foreign futures options customer telephoned an order to an employee of an FCM and the FCM, using its customer omnibus account, were to take the order and transmit it electronically to another FCM, a Rule 30.10 firm or a firm otherwise exempt from registration as an FCM[36] for transmission into an automated board of trade, transmission of the order from the customer's FCM through the other firm for execution would constitute use of an AORS. Accordingly, under proposed Rule 30.3(d), the board of trade for which the order was placed must be a Rule 30.11 exempt board of trade or a linked exchange. The AORS used by the customer's FCM in this example would not have to be a qualified AORS that meets the credit check and other requirements of proposed Rule 1.71, however, because its use was by an FCM for a customer omnibus account.

Where a non-clearing member of a board of trade operating under a Rule 30.11 exemption order or of a linked exchange uses an automated device directly to access the board of trade's automated order matching engine and there is a post-trade give-up for clearing to an FCM or a Rule 30.10 firm, this would be treated as use of a DES rather than an AORS under the proposed rules. The requirements of proposed Rule 1.71 therefore would not apply.[37] However, an FCM or Rule 30.10 firm must bear in mind that, if the non-clearing member used an automated device to route an order through the FCM or Rule 30.10 firm prior to the order's transmission to the matching/execution engine of the board of trade, this would be treated as use of an AORS by the non-clearing member customer, and the AORS therefore would have to be a qualified AORS and to satisfy the requirements of proposed Rule 1.71, unless the non-clearing member is itself an FCM or has a proprietary relationship to the FCM receiving the order.

b. Requirements for Qualified AORSs

Proposed Rule 1.71 would set forth very basic standards that must be met by a qualified AORS. If these minimum requirements are satisfied, there would

[35] *See* proposed rule 30.11(b)(2)(xii).

[36] *See supra* note 20.

[37] The firm carrying the account generally would have to be a registered FCM or Rule 30.10 firm.

be no restriction upon the type of customer that could use the AORS, *e.g.*, no minimum net worth standards, and no restrictions upon the type of data that may be displayed to the customer. The AORS must be limited to exchange trading only, either on a designated contract market, an exchange linked to such a contract market or a board of trade that receives an exemption order in accordance with proposed Rule 30.11.[38]

A qualified AORS may only provide access for a customer or a foreign futures or foreign options customer to products that can lawfully be offered to or entered into by U.S. persons. Thus, for example, if there were a futures contract traded on a board of trade with a Rule 30.11 exemption order (or a linked exchange) involving a foreign stock index or a foreign government's sovereign debt instruments that had not received the requisite clearances, the futures contract could not lawfully be offered or sold to U.S. persons. The FCM (or Rule 30.10 firm, as applicable) should also exercise due diligence to verify that use of an AORS is permissible under, and undertaken in accordance with, the rules of the relevant contract market, board of trade that received a Rule 30.11 exemption order, or linked exchange.

For trading through an FCM, a qualified AORS would be required to provide all information required by Commission Rule 1.35(a–1)(1) concerning identification of customer orders, except that order-related times would have to be captured to the nearest second. The proposed requirement for timing to the nearest second is consistent with the Commission's previous advisory concerning recordkeeping requirements for electronic order-routing systems.[39]

The Commission believes that the use of AORSs may be beneficial for customers and FCMs in terms of convenience and efficiency. However, these systems are not infallible or without serious risk. The Commission is concerned that, due to the speed and the uninterrupted nature of an automated device, an error, if one should occur, could be very large in magnitude and impact and thus potentially could pose a significant risk to customers, to the integrity of the FCM and to the marketplace in general if the AORS does not contain appropriate safeguards. Commission Rule 1.16 requires, among other things, that an FCM have in place appropriate internal accounting controls and procedures for safeguarding customer and firm assets.[40] However, that rule does not prescribe specific controls that must be in place. The Commission believe that it is appropriate to mandate that certain specific, minimum controls be present in any qualified AORS. These minimum safeguards do not supplant or replace an FCM's duties under Rules 1.16 and 166.3 and other applicable regulations, concerning proper internal controls and supervision of employees and accounts. Rather, they are minimum standards that should be implemented in addition to other appropriate controls employed by FCMs regarding AORSs.

Proposed Rule 1.71(b)(3) requires generally that an FCM or Rule 30.10 firm take reasonable steps to ensure that its system is and remains sound and secure and generally fit for its intended purpose. Proposed Rule 1.71(b)(5) provides that a qualified AORS must contain at a minimum checks that verify that any credit and trading or position limits for the account (as established by the FCM or Rule 30.10 firm) are not exceeded.[41] Such checking could be performed manually or by the system itself on an automated basis. If these checks are automated, the FCM or Rule 30.10 firm must implement proper internal controls to ensure that limits appropriate to each customer or foreign futures or foreign options customer, as determined by personnel authorized to set such limits, are properly input into the AORS and updated as appropriate. The Commission is also proposing, in proposed Rule 1.71(b)(6) and (b)(7), that a qualified AORS must provide: (1) An FCM or Rule 30.10 firm, on a unilateral and immediate basis, with the capability to block use of an AORS if, for example, the firm determines that its security or the security of any contract market, linked exchange or board of trade operating pursuant to a Rule 30.11 exemption order may be adversely affected by use of the AORS and (2) reasonable precautions to ensure against unauthorized access, unauthorized trading and unauthorized disclosure of customer or foreign futures or foreign options customer orders[42] and to provide overall integrity and security of the AORS.

With respect to recordkeeping, the Commission is proposing that a qualified AORS must enable an FCM to download trade history on each order entered through the system on a daily basis and otherwise to maintain records related to such orders in accordance with Commission Rule 1.31.[43] To assure system integrity and appropriate trade data, any and all modifications to or cancellations of an order must be recorded. In addition, the Commission is proposing to require an FCM to maintain a record of accounts for which it will accept or transmit for execution orders that have been entered through an AORS. This record shall also include the name of any person designated by a customer or a foreign futures or foreign options customer to exercise control over the trading decisions for the account and shall be maintained in accordance with Commission Rule 1.31.[44] A Rule 30.10 firm should maintain records in accordance with the

[38] An AORS could also provide access to trading in cash markets, securities markets, or CEA-exempt hybrid markets, if such trading is consistent with all applicable laws and regulations. Trading of swaps via AORSs would not be permissible under the current Commission exemption for swaps, which prohibits the use of multilateral transaction execution facilities for swaps trading, *see, e.g.,* Rule 35.2(d), and thus would not be permissible under proposed Rule 1.71.

[39] 62 FR 7675, at 7677 (Feb. 20, 1997).

[40] In particular, Rule 1.16(d)(1) requires that the scope of the FCM's annual audit, review of the accounting system and procedures for safeguarding customer and firm assets be ''sufficient to provide reasonable assurance that any material inadequacies existing at the date of the examination in (i) the accounting system, (ii) the internal accounting controls, and (iii) the procedures for safeguarding customer and firm assets . . . will be discovered.'' A material inadequacy is defined generally in Rule 1.16(d)(2) to include, among others, ''any conditions which contributed substantially to or, if appropriate corrective action is not taken, could reasonably be expected to . . . (r)esult in material financial loss(.)'' *See also,* Commission Rule 166.3, which governs an FCM's general supervisory duty with respect to handling of accounts.

[41] This proposed rule is consistent with conditions currently placed on customers of the CME who may transmit Globex orders to FCMs via the Internet. By letter to the CME dated August 14, 1997, the Division, under authority delegated by the Commission in Rule 1.41(a)(3), informed the CME that its proposal to permit customers to transmit Globex orders to FCMs via the Internet did not require Commission approval under section 5a(a)(12) of the Act. Under CME's proposal, customers do not have direct access to Globex. Rather, the proposal permits CME clearing members to accept customer orders via the Internet. After receipt of a customer order, the order is transmitted to Globex via the clearing member's order routing system and CME's computer-to-computer interface (''CTCI''), which enables a clearing member to upload and download orders between the member's order routing system and Globex. A CME clearing member may use CME's CTCI only if (1) the member's order routing system contains automated credit controls or position limits or (2) customer orders received by a member through its order routing system are subject to manual review and processing by a clearing member employee prior to being entered into a Globex terminal.

[42] *See* Commission Rule 155.3(b)(1).

[43] *See* proposed Rule 1.71(b)(8).

[44] Proposed Rule 1.71(c). The records of third-party account controllers, like all books and records required to be kept by the Act or rules thereunder, must be readily accessible during the first two years of the required five-year retention period under Rule 1.31. Commission staff have sometimes experienced difficulty in obtaining this information on existing accounts. Such information is required by Rule 1.37 and is generally maintained by FCMs, but sometimes the manner of maintenance improperly makes ready retrieval difficult.

requirements of its home country regulator, which would then be available to Commission or NFA representatives under appropriate information sharing arrangements.

As discussed above, proposed Rule 1.71 is intended to establish minimum requirements with respect to the use and the soundness of an AORS. The Commission believes that these basic, common sense requirements likely would be adopted by any responsible FCM or Rule 30.10 firm, even in the absence of Commission action. Indeed, the Commission anticipates that AORSs may contain protections more elaborate than those required under the proposed rules. Depending on the nature of the system, compliance with existing Commission Rules 1.16 and 166.3 may require more stringent internal controls and protections to be in effect. The Commission requests comments as to whether any additional specific prudential standards should be included in the Commission's rules concerning the use of AORSs.

Certain commenters noted that rules pertaining to AORSs should apply universally. The Commission agrees with that position and is therefore proposing to add to Commission Rule 30.3 a new paragraph (e) to provide that, notwithstanding the terms of any prior Rule 30.10 order, it shall be unlawful for a Rule 30.10 firm to accept or transmit for execution an order from a foreign futures or foreign options customer through an AORS unless the system satisfies the requirements of proposed Rule 1.71(a), as appropriate for a Rule 30.10 firm. This provision would apply to existing Rule 30.10 firms irrespective of what may have been stated in an earlier Commission order under Rule 30.10.

With respect to the disclosure of risk that an FCM must provide to a customer or a foreign futures of foreign options customer using an AORS, the Commission notes that Rule 1.55, certain provisions of which are referred to above, provides in paragraph (g) thereof that any specific requirements set forth therein do ''not relieve (an FCM) from any other disclosure obligation it may have under applicable law.'' Therefore, although the Commission is not proposing any specific risk disclosure *language* applicable to an AORS or a DES, just as it has not done so for contract market automated trading systems, the Commission believes that FCMs must disclose material risks about these systems. Designated contract markets have developed risk disclosure statements for their automated trading systems that FCMs provide to customers using those systems, and comparable risk disclosures would be necessary and appropriate as to AORSs and DESs.

The Commission notes that there have been discussions between Commission staff and a joint industry-NFA committee concerning a generic electronic trading and order routing systems disclosure statement, which is proposed to replace the contract market-specific disclosure statements with the understanding that customers would always be entitled to further information about a particular system upon request or about particular material risks not otherwise covered by the generic disclosure statement. In determining whether a petitioner's regulatory structure is generally comparable to the U.S. structure with respect to customer protection and prohibition of fraud and abuse, the Commission would review the petitioner's risk disclosures pertaining to its automated trading systems in light of those prepared by designated contract markets for their systems and any generic disclosure statement ulitmately developed in discussions between Commission staff and the industry-NFA committee discussed above. The Commission requests comment concerning any specific disclosure provisions that should be set forth in Commission rules.

The Commission also notes that proposed Rule 1.71 would not apply in a situation where the customer is outside the U.S. and trades on a Rule 30.11 exempt board of trade or foreign board of trade, but the trade is given up for clearance after execution to an FCM. The focus of Rule 1.71 is to assure that there is a sound automated system that will be secure and provide for credit and trading or position limit checks prior to execution, and the Commission does not believe that the above situation would allow pre-screening by the FCM. Of course, the Commission expects that an FCM will maintain appropriate internal controls and supervision with respect to any account that it clears in accordance with existing Rules 1.16 and 166.3.

The Commission is not proposing to apply the AORS definition or Rule 1.71 to order routing for open outcry execution. The Commission intends that these proposals would not alter its prior advisory referred to above or impact on efforts of contract markets using open outcry execution to enhance the automation of order flow.

4. Interim Procedures

Several commenters have requested that the Commission grant interim relief to allow automated access from within the U.S. to boards of trade primarily operated outside the U.S. in anticipation of the Commission's final rules. The Commission appreciates the importance of the issues involved in this rulemaking, but does not believe that it is appropriate to grant interim relief either before the Commission's adoption of final rules or pending the Commission's review of a board of trade's petition. Interested boards of trade should feel free, however, to begin a dialogue now with Commission staff to help expedite their preparation and submission of a petition following the Commission's adoption of final rules.

IV. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA''), 5 U.S.C. 601–611 (1994), requires that agencies, in proposing rules, consider the impact of those rules on small businesses. The proposed rules discussed herein would affect boards of trade, their members or members' affiliates and FCMs. Many board of trade members and affiliates thereof will be FCMs. The commission previously has determined that, based upon the fiduciary nature of the FCM/customer relationships, as well as the requirement that FCMs meet minimum financial requirements, FCMs should be excluded from the definition of small entity.[45] With respect to potentially affected entities that are not FCMs, such entities must be board of trade members or their affiliates, which generally have financial requirements comparable to FCMs. On that basis, these entities should not be considered ''small.'' Boards of trade likely to seek electronic access to their products from within the U.S. are similar in nature to designated contract markets, and the Commission has excluded contract markets from the definition of small entity.[46] Accordingly, on behalf of the Commission, the Chairperson certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities. Moreover, this proposal provides an alternative to the contract market designation process and to compliance with the law and rules related to contract markets and, in that respect, is less burdensome than that currently in place. Nevertheless, we invite comments regarding the applicability of the FRA to these proposed rules.

B. Paperwork Reduction Act

When publishing proposed rules, the Paperwork Reduction Act of 1995 (Pub.

[45] FR 18618–18621 (April 30, 1982).

[46] *Id.*

L. 104–13 (May 13, 1995)) imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the Paperwork Reduction Act. In compliance with the Act, the Commission, through these rule proposals, solicits comments to:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including the validity of the methodology and assumptions used; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of the information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

The Commission has submitted these proposed rules and their associated information collection requirements to the Office of Management and Budget. The burden associated with this entire collection (3038–0023), including these proposed rules, is as follows:

Average Burden Hours Per Response: 39.36003.

Number of Respondents: 73,640.

Frequency of Response: On occasion.

The burden associated with this specific proposed rule, is as follows:

Average Burden Hours Per Response: 21.25003.

Number of Respondents: 140.

Frequency of Response: On occasion and quarterly.

Persons wishing to comment on the estimated paperwork burden associated with these proposed rules should contact Desk Officer, Office of Management and Budget, Room 10202, NEOB, Washington, DC 20503 (202) 395–7340. Copies of the information collection submission to OMB are available from the CFTC Clearance Officer, 1155 21st Street, NW., Washington, DC 20581, (202) 418–5160.

List of Subjects

17 CFR Part 1

Commodity futures; Automated order routing system.

17 CFR Part 30

Commodity futures; Foreign futures and foreign options.

In consideration of the foregoing, and pursuant to the authority contained in the Commodity Exchange Act, and in particular, sections 2(a)91)(A), 4, 4c and 8a thereof, 7 U.S.C. 2, 6, 6c and 12a, the Commission hereby proposes to amend parts 1 and 30 of chapter I of title 17 of the code of Federal Regulations as follows:

PART I—GENERAL REGULATIONS UDNER THE COMMODITY EXCHANGE ACT

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

Authority: 7 U.S.C. 1a, 2, 2a, 4, 4a, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6k, 6l, 6m, 6n, 6o, 6p, 7, 7a, 7b, 8, 9, 12, 12a, 12c, 13a, 13a–1, 16, 16a, 19, 21, 23 and 24.

2. Section 1.3 is proposed to be amended by adding paragraph (tt) to read as follows:

§ 1.3 Definitions.

* * * * *

(tt) *Automated order routing system*. This term means any system of computers, software or other devices that allows entry of orders through another party for transmission to a board of trade's computer or other automated device where, without substantial human intervention, trade matching or execution takes place.

3. Section 1.71 is proposed to be added to read as follows:

§ 1.71 Automated order routing system.

(a) It shall be unlawful for a firm registered or required to be registered as a futures commission merchant or a firm exempt from such registration under § 30.10 of this chapter to accept or transmit for execution an order from or on behalf of a customer (other than an owner or holder of a proprietary account as defined in § 1.3(y)) or a foreign futures or foreign options customer (as defined in § 30.1(c) of this chapter) that has been entered through an automated order routing system, whether the system is operated, maintained or provided to the customer or the foreign futures or foreign options customer by the futures commission merchant, a firm exempt from such registration under § 30.10 of this chapter or by another person, unless the automated order routing system is a qualified automated order routing system: *Provided, however* that the requirements of this section shall not apply to orders received by a firm registered or required to be registered as a futures commission merchant or a firm exempt from such registration under § 30.10 of this chapter *from* a registered futures commission merchant for that futures commission merchant's customer omnibus accounts or proprietary accounts.

(b) To be a qualified automated order routing system, such automated order routing system shall provide that:

(1) Access is limited to:

(i) Trading conducted on or subject to the rules of a designated contract market, through a registered futures commission merchant;

(ii) Trading conducted on or subject to the rules of a board of trade to which the Commission has issued an exemption order under section 4(c) of the Act following the board of trade's submission of a petition in accordance with § 30.11 of this chapter; or

(iii) Trading conducted on a board of trade the products of which are accessible as part of an automated trading system operated pursuant to specific rules regarding the particular linkage arrangement that have been submitted by a designated contract market to the Commission and are in effect pursuant to section 5a(a)(12)(A) of the Act and § 1.41 and which is otherwise primarily operating outside the United States.

(2) Access is limited to products that can be lawfully offered and sold in the United States;

(3) The futures commission merchant or firm exempt from such registration under § 30.10 of this chapter takes reasonable steps to ensure that the system is and remains sound and secure and fit for the purpose for which it is intended;

(4) For futures commission merchants, information required by § 1.35(a–1)(1) is recorded in accordance with that paragraph, except that order-related times must be captured to the nearest second;

(5) It is designed and operated consistent with the duty of the futures commission merchant or firm exempt from such registration under § 30.10 of this chapter to maintain proper internal controls and supervision over the handling of customer accounts. This must include, but is not limited to, credit and trading or position limit checks that are performed, either by a natural person or by the system itself, prior to the order's execution. If such credit and trading or position limit checks are automated, the futures commission merchant or firm exempt from such registration under § 30.10 of this chapter shall implement proper internal controls to ensure that limits appropriate to each customer or foreign futures or foreign options customer as determined by personnel of the futures commission merchant or the firm exempt from such registration under § 30.10 of this chapter authorized to set such limits are properly input into the

automated order routing system and updated as appropriate;

(6) The futures commission merchant or firm exempt from such registration under § 30.10 of this chapter has the capability on a unilateral and immediate basis to block any customer's or foreign futures or foreign options customers' use of an automated order routing system where necessary or appropriate to safeguard the futures commission merchant or firm exempt from registration under § 30.10, customer accounts or the stability or security of any designated contract market or any board of trade referred to in paragraphs (b)(1)(ii) and (iii) of this section; or for any other appropriate reason;

(7) There are reasonable safeguards to ensure against unauthorized access, unauthorized trading, and unauthorized disclosure of customer or foreign futures or foreign options customer orders and to provide overall integrity and security of the automated order routing system; and

(8) For a futures commission merchant, that the futures commission merchant has the capability to download trade history on each order entered through an automated order routing system on a daily basis and otherwise to maintain records related to such orders in accordance with § 1.31.

((c)(1) A futures commission merchant shall maintain in accordance with § 1.31 a record of those accounts of customers or foreign futures or foreign options customers for which the futures commission merchant will accept or transmit for execution orders that have been entered through an automated order routing system. This record shall also include the name of any person designated by the customer or foreign futures or foreign options customer to exercise control over the trading decisions for the account, which shall be readily accessible during the first two years of the required five-year retention period under § 1.31.

(2) A firm that is exempt from registration as a futures Medicare pursuant to an order granted by the Commission under § 30.10 of this chapter shall maintain in accordance with the recordkeeping requirements of its home country regulator a record of those accounts of foreign futures or foreign options customers for which the firm will accept or transmit for execution orders that have been entered through an automated order routing system. This record shall also include the name of any person designated by the foreign futures or foreign options customer to exercise control over the trading decisions for the account and shall be made available upon the request of any Commission representative.

PART 30—FOREIGN OPTIONS AND FOREIGN FUTURES TRANSACTIONS

4. The authority citation for part 30 continues to read as follows:

Authority: 7 U.S.C. 2, 4, 6, 6c, and 12a.

5. Section 30.3 is proposed to be amended by adding paragraphs (c)–(e) to read as follows:

§ 30.3 prohibited transactions.

* * * * *

(c) Except as otherwise provided in § 30.11, it shall be unlawful to use or to provide to any person in the United States a direct execution system (as defined in § 30.11(a)(1)) for the purpose of facilitating the execution of transactions in foreign futures or foreign options unless the board of trade to which the direct execution system provides access has been designated as a contract market under section 5 of the Act.

(d) Except as otherwise provided in § 30.11, it shall be unlawful for any person to solicit or accept orders for, or to accept money, securities or property in connection with, the purchase or sale of foreign futures or foreign options by a foreign futures or options customer that are entered via an automated order routing system (as defined in § 30.11(a)(2)) unless the board of trade through which the transaction is to be executed has been designated as a contract market under section 5 of the Act.

(e) notwithstanding the terms of any prior Commission order issued under § 30.10, it shall be unlawful for a firm operating pursuant to a confirmation of a Commission order issued under § 30.10 to accept or transmit for execution an order from a foreign futures or foreign options customer through an automated order routing system unless the applicable requirements of § 1.71 of this chapter are satisfied.

§ 30.11 [Redesignated as § 30.12]

6. Section 30.11 is redesignated as § 30.12 and a new § 30.11 is added to read as follows:

§ 30.11 Access from the United States to automated trading systems of a board of trade whose primary locus of regulation and operations is otherwise outside the United States.

(a) Definitions: For purposes of this section:

(1) *Direct execution system* means any system of computers, software or other devices that allows entry of orders for products traded on a board of trade's computer or other automated device where, without substantial human intervention, trade matching or execution takes place: *Provided, however,* that this term shall not include an automated order routing system as that term is defined in § 1.3(tt) of this chapter.

(2) *Automated order routing system* means automated order routing system as defined in § 1.3(tt) of this chapter.

(3) An *affiliate* of a member of a board of trade for purposes of this rule means any person that:

(i) Owns 50% or more of a member;

(ii) Is owned 50% or more by the member; or

(iii) Is owned 50% or more by a third person that also owns 50% or more of the member.

(4) *Proprietary account* means proprietary account as defined in § 1.3(y) of this chapter.

(b)(1) Upon the submission of a petition for exemption by a board of trade in accordance with this section, the Commission may issue an exemption order to the board of trade if the Commission determines that:

(i) The petitioner is an established board of trade that wishes to place within the United States an automated trading system permitting access to trading its products but whose activities are otherwise primarily located in a particular foreign country that has taken responsibility for regulation of the petitioner;

(ii) The petitioner's home country has established a regulatory scheme that is generally comparable to that in the U.S. and provides basic protections for customers trading on markets and for the integrity of the markets themselves;

(iii) Except for certain incidental contacts with the U.S., the petitioner would be present in the U.S. only by virtue of being accessible from within the U.S. via its automated trading system;

(iv) The petitioner is willing to submit itself to the jurisdiction of the Commission and the U.S. courts in connection with its activities conducted under an exemptive order;

(v) The petitioner's automated trading system has been approved by the petitioner's home country regulator following a review of the system that applied the standards set forth in the 1990 International Organisation of Securities Commissions report on screen-based trading systems (as may be revised and updated from time-to-time) or substantially similar standards; and

(vi) Satisfactory information sharing arrangements are in effect between the Commission and the petitioner and the petitioner's regulatory authority.

(2) A petition of a board of trade made pursuant to this section should be filed with the Secretary of the Commission and must contain the following information, in English:

(i) The address of the petitioner's main business office and the name, address, telephone number, facsimile number and electronic mail address of a person to contact for additional information concerning the petition;

(ii) The petitioner's articles of association, constitution, or other similar organizational documents along with the date and place of its establishment;

(iii) A complete description of the contracts that initially will be traded through direct execution systems and/or automated order routing systems located in the United States;

(iv) The petitioner's current rules including all rules for members and users, which may be attached as an Appendix to the petition, and shall include a description of membership requirements and classes and distinctions between customer and proprietary trading;

(v) The address of the office responsible for monitoring compliance with the petitioner's rules and the supervisory arrangements for monitoring compliance with the rules insofar as the rules apply to activities conducted in the United States, as well as the name and address of the petitioner's home country regulator;

(vi) A description of the regulatory structure established in the petitioner's home country, including, without limitation, a description of the regulatory authority to which the petitioner is subject under the laws of such country, the status of the petitioner under those laws, and the applicable statutory and regulatory requirements established by law or by the regulatory authority that govern the operation of futures and options trading in the petitioner's home country, including, without limitation, applicable regulations or requirements concerning:

(A) Prohibition of fraud, abuse and market manipulation relating to trading on petitioner's markets;

(B) Recordkeeping and reporting by the petitioner or its members;

(C) Fitness standards for intermediaries operating on petitioner's markets, members, or others;

(D) Financial standards for the petitioner's members;

(E) Protection of customer funds, including procedures in the event of a clearing member's default, insolvency or bankruptcy;

(F) Trade practice standards;

(G) Rule review or general review of board of trade operations by its regulatory authority;

(H) Surveillance, compliance, and enforcement mechanisms employed by the board of trade and its regulatory authority to ensure compliance with their rules and regulations; and

(I) Regulatory oversight of clearing facilities; *Provided, however,* that if the petitioner or the regulatory authority that governs the petitioner has received an order of exemption, for trading on the petitioning board of trade, from the Commission under § 30.10 and the information required by paragraphs (b)(2) (ii), (iv) and (vi) of this section was provided to the Commission in the petition for such order and has not changed materially from the date of the Commission's order, the petitioner may, in lieu of furnishing the information otherwise required under paragraphs (b)(2) (ii), (iv) and (vi) of this section, make a statement to such effect which shall specify the date(s) the information was provided to the Commission and the name of the petitioner who received an order from the Commission under § 30.10;

(vii) Information sharing arrangements in effect between the board of trade and the regulatory authority in the petitioner's home country and the Commission, including information concerning any blocking statutes or data protection laws in effect in the petitioner's home country that might impair the Commission's ability to obtain information in accordance with such an arrangement;

(viii) A general description of the order matching/execution system and any direct execution system, software or devices operated by the board of trade, including, at a minimum, a general description of the architecture and security features of the systems, a statement as to the length of time such systems have been operating, a complete history of any significant system failures or interruptions, and a discussion of the nature of any technical review of the board of trade's order matching/execution system or direct execution system performed by the board of trade's home country regulator, including a copy of any order or certification received and any discrepancies between the standard of review and the principles for screen-based trading set forth by the International Organisation of Securities Commissions: *Provided, however,* that if the information required by this paragraph has been provided to the Commission, or will be provided to the Commission contemporaneously with the board of trade's petition, by another board of trade whose products trade through the same direct execution system or automated order routing system as the petitioner, the petitioner must so state and must identify the board of trade that has or will provide the Commission with the required information and need not itself provide the information required under this paragraph, but will remain responsible for the provision of such information by the other board of trade;

(ix) A description of all activities engaged in by the board of trade or its employees, agents or representatives in the United States, including, but not limited to, activities in connection with marketing, education or otherwise promoting the board of trade's business or products;

(x) The address of, and a description of activities engaged in by, any office of the board of trade located in the United States and the number of personnel employed or retained by the board of trade in the United States, including the number of personnel in each such office;

(xi) If the petitioner lists for trading any futures contracts that involve physical delivery of the underlying commodity and warehouses in connection with such delivery are located in the United States, its territories or possessions, the address of any such warehouses;

(xii) A written statement in which the petitioner consents to or agrees to comply with each of the conditions listed in paragraph (d) of this section; and

(xiii) Any further information that the Commission or its representatives request.

(c) To the extent that the products of multiple boards of trade are to be traded from the same direct execution system or automated order routing system, each board of trade whose products will be made available from such systems located in the United States must, either individually or jointly, submit a petition in accordance with this section: *Provided, however,* that a board of trade's products may be offered through direct execution systems or automated order routing systems located in the United States and need not submit a petition to the Commission under this section or be designated as a contract market under section 5 of the Act if its products are accessible as part of an electronic trading system operated pursuant to specific rules regarding the particular linkage arrangement that have been submitted by a designated contract market to the Commission for review and are in effect under section 5a of the Act.

(d) The Commission may issue an order under section 4(c) of the Act and the provisions of this section subject to such terms and conditions as the Commission may find appropriate: *Provided, however,* that any order issued to a board of trade under this section will be subject to the following conditions at a minimum, unless otherwise specified in the order by the Commission:

(1) Only members of the board of trade and affiliates thereof will have access to direct execution systems, and the board of trade will not provide, and will take reasonable steps to prevent third parties from providing, direct execution systems to persons other than members and their affiliates;

(2) Unless otherwise exempt from registration, any member or affiliate thereof that solicits or accepts orders for, or accepts money, securities or property in connection with the purchase or sale of foreign futures or foreign options by a foreign futures or foreign options customer via an automated order routing system, or that transmits the order of a foreign futures or foreign options customer via a direct execution system, must be a registered futures commission merchant or a firm exempt from such registration pursuant to an order granted under § 30.10;

(3) The board of trade will submit the following information to the Commission on at least a quarterly basis:

(i) For each contract available to be traded through direct execution systems and automated order routing systems located in the United States, the total trade volume originating from such systems located in the United States; and

(ii) For each contract available to be traded through direct execution systems and automated order routing systems located in the United States, the board of trade's total worldwide trade volume, from any source;

(iii) A current list that:

(A) Identifies and provides the main business addresses in the United States for those of its members and affiliates thereof that have direct execution systems in the United States and indicates which of such members and affiliates thereof allow the use of automated order routing systems for foreign futures and foreign options customers; and

(B) Identifies and provides the main business addresses for those of its members and affiliates thereof that allow the use of automated order routing systems by foreign futures and foreign options customers, but who do not have direct execution systems in the United States: *Provided, however,* that the board of trade will additionally provide a current list to a Commission representative at any time upon request;

(4) The board of trade will provide the Commission with written notice within 30 calendar days of:

(i) Any material change to any information provided in its petition to the commission for a section 4(c) exemption order under this section: *Provided, however,* that the board of trade will notify the Commission in writing:

(A) At least ten business days prior to offering any products not listed in its initial petition to be traded through direct execution systems or automated order routing systems located in the United States and;

(B) Within 24 hours of any significant system failure or interruption or a member's default, insolvency or bankruptcy;

(ii) A change in any laws or rules in the board of trade's home country relevant to futures or options, including rules of the board of trade itself, that may have a material impact on the order;

(iii) Any known violation of any obligations under the order committed by a member of the board of trade or an affiliate thereof operating in the United States under the order; and

(iv) Any disciplinary action taken against a member of the board of trade or an affiliate thereof operating in the United States under the order that involves any market manipulation, fraud, deceit or conversion or that results in suspension or expulsion and that involves the use of a direct execution system or an automated order system in the United States;

(5) Satisfactory information sharing arrangements must remain in effect between the board of trade and the board of trade's regulatory authority and the Commission;

(6) Prior to operating pursuant to the section 4(c) exemption order, the board of trade must file with the Commission, and maintain thereafter as long as the board of trade operates pursuant to the order, a valid and binding appointment of an agent for service of process in the United States, pursuant to which such agent is authorized to accept delivery and service of communications issued by or on behalf of the Commission, the Department of Justice, any board of trade member or affiliate of such member, or any foreign futures or foreign options customer. Service or delivery of any communication issued by or on behalf of any of the foregoing to the appointed agent shall constitute valid and effective service or delivery; and

(7) Prior to operating pursuant to the section 4(c) exemption order, the board of trade must file with the Commission a written representation, executed by someone with authority to bind the board of trade, that, as long as the board of trade operates pursuant to the order, the board of trade irrevocably agrees to and submits to the jurisdiction of the Commission and state and federal courts in the United States with respect to the board of trade's activities conducted under the section 4(c) exemption order;

(8) The Commission, in its discretion, may require other information of the board of trade to evaluate its continued eligibility for or compliance with conditions of a section 4(c) exemption order, or for any other reason. The Commission may require the board of trade to provide information regarding the stocks held at any warehouse maintained by the board of trade in the U.S. for products that require physical delivery.

(e) The Commission shall publish in the **Federal Register** a notice of availability of each petition received under paragraph (b) of this section for the purpose of providing notice to the public. Interested parties may request a copy of the petition or relevant parts thereof from the Secretary of the Commission: *Provided, however,* that the Commission may limit the public availability of any information received from the petitioner if the petitioner submits a written request to limit disclosure contemporaneously with the petition and the Commission determines that the information sought to be restricted constitutes a trade secret or that public disclosure of the information would result in material competitive harm to the petitioner.

(f) The Commission may, as it deems appropriate, condition, modify, suspend, terminate, or otherwise restrict the terms of an order issued under section 4(c) of the Act in accordance with this section if the Commission determines that a board of trade that has received a section 4(c) exemption order in accordance with this section is in material violation of any term or condition of the order, or this section that the continued effectiveness of the order would be contrary to public policy or the public interest, or that circumstances otherwise do not warrant continuation of the order as issued. The Commission may take such action with respect to the order in its entirety or with respect to a specific person or persons operating thereunder.

(g) Any trading conducted on or subject to the rules of a board of trade

that has received a section 4(c) exemption order in accordance with this section or a board of trade the products of which are accessible as part of an automated trading system operated pursuant to specific rules regarding the particular linkage arrangement that have been submitted by a designated contract market to the Commission and are in effect pursuant to section 5a(a)(12)(A) of the Act and § 1.41 of this chapter and which otherwise operates primarily outside the United States shall be deemed to involve the trading of foreign futures or foreign options, as appropriate, under the definitions of § 30.1(a) and (b) and under any provisions that refer to those definitions. A person located in the United States, its territories or possessions engaged in such trading shall be deemed to be a foreign futures or foreign options customer under § 30.1(c).

Issued in Washington, DC on March 16, 1999 by the Commission.

Jean A. Webb,

Secretary of the Commission.

Commissioner Barbara P. Holum joining in the concurring opinions of Commissioners Spears and Newsome.

Dated: March 16, 1999.

Commissioner Barbara P. Holum.

Concurring Opinion of Commissioner David D. Spears—Proposed Rules Concerning Access to Automated Boards of Trade

I have significant reservations about the complexity of the proposed rules. I believe the elaborate regulatory system this proposal envisions could impose unnecessary burdens on US FCMs and could be cited by foreign regulators as justification for imposing unnecessarily restrictive requirements on US exchanges. However, I also recognize that the Commission needs to act as quickly as possible to address issues relating to access to foreign boards of trade from within the US. Further delay in issuing proposed rules to allow for additional revisions or refinements in the proposal would be a disservice to those affected by the proposal. The investing public and the futures industry have every right to expect this agency to act expeditiously in bringing legal certainty to this area. Therefore, I have voted to issue the proposed rules in the form presented. However, I would urge commenters to review the proposal carefully with an eye toward suggesting revisions that would make the rules simpler without detracting from adequate customer protection or the fair and even-handed treatment of all affected parties.

Concurring Opinion of Commissioner James E. Newsome—Proposed Rules Concerning Automated Trading System Use in the United States

I respectfully concur in the issuance of the proposed rules concerning automated trading system use in the United States. I agree that the proposal should be released for public comment, but I do not agree with the approach detailed therein, for the reasons stated below.

My concerns are twofold: first, I believe that the proposal is overly regulatory in approach, and secondly, I believe that there are troublesome jurisdictional issues inherent in the proposed regulation, specifically, the use of the Commodity Exchange Act's § 4(c) exemptive authority and the possible conflict with the Act's § 4(b) jursidictional limitations. I do not believe that the proposal appropriately mitigates the competitive concerns of our domestic exchangers, and, indeed, may well exacerbate the issue of inequitable regulatory treatment. Moreover, I believe that there are unnecessary additional burdens included in this proposal that would negatively affect the futures commission merchant community.

Given the widespread interest in this issue and the unfortunate delay in its release, I support moving forward expeditiously and giving the public another opportunity to comment on the proposal. However, I strongly urge interested parties to comment particularly on the issues I have mentioned, as well as alternative methods of addressing this issue, including, for example, the use of no-action procedures or the CEA's Part 30 Regulations.

Dated: March 15, 1999.

James E. Newsome,

Commissioner.

[FR Doc. 99–6829 Filed 3–23–99; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket No. 99N–0554]

How to Use Health Claims and Nutrient Content Claims in Food Labeling; Public Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Announcement of public meeting.

SUMMARY: The Food and Drug Administration (FDA) is announcing a forthcoming public meeting concerning implementation of sections 303 and 304 of the Food and Drug Administration Modernization Act of 1997 (FDAMA). Those provisions provide for use, in food labeling, of health claims and nutrient content claims based on authoritative statements published by certain Federal scientific bodies or the National Academy of Sciences (NAS) or any of its subdivisions. We are holding the meeting to allow you to provide information and recommendations to assist us in identifying appropriate approaches for implementing sections 303 and 304 of FDAMA. We anticipate that the discussion will include presentations from people whom we invite to participate as well as from members of the public.

DATES: We will hold the meeting on May 11, 1999, 8 a.m. to 5 p.m. Please register by April 27, 1999. Written comments should be submitted by May 11, 1999.

ADDRESSEES: The meeting will be held at the Jefferson Auditorium, U.S. Department of Agriculture, South Bldg., 1400 Independence Ave. SW., Washington, DC.

You may submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. You may also send comments to the Dockets Management Branch at the following e-mail address: ''FDADockets@bangate.fda.gov'' or via the FDA Website ''http://www.fda.gov''.

FOR FURTHER INFORMATION CONTACT: Jeanne E. Latham, Center for Food Safety and Applied Nutrition (HFS–456), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–4697, or e-mail to ''JLatham@bangate.fda.gov''.

SUPPLEMENTARY INFORMATION:

I. Background

On November 21, 1997, the President signed FDAMA (Pub. L. 105–115) into law. FDAMA made amendments to the Federal Food, Drug, and Cosmetic Act (the act). In particular, sections 304 and 303 of FDAMA amended section 403(r)(2) and (r)(3) of the act by adding new paragraphs (r)(2)(G), (r)(2)(H), (r)(3)(C), and (r)(3)(D) to section 403 of the act (21 U.S.C. 343(r)(2)(G), (r)(2)(H), (r)(3)(C), and (r)(3)(D), respectively). These new paragraphs provide for the use in food labeling of nutrient content claims and health claims, respectively,

based on authoritative statements 120 days after a notification of the claim is submitted to the agency. This notification process added by FDAMA supplements the petition process for nutrient content and health claims provided by section 403(r)(4) of the act (21 U.S.C. 343(r)(4)) and §§ 101.69 and 101.70 (21 CFR 101.69 and 101.70, respectively). It does so by providing a less time-consuming and less burdensome alternative for establishing the scientific basis for such claims through use of authoritative statements of certain scientific bodies.

Since the passage of FDAMA, FDA has been reviewing both the statute and the accompanying legislative history to determine the most appropriate approach for implementing these new provisions. We issued a guidance document in early June 1998 (Ref. 1). In this guidance, we focused on the submission procedures for notifications of claims, identified appropriate Federal scientific bodies, discussed the nature of authoritative statements and the scientific standard with respect to health claims, outlined the content of a notification and other statutory requirements, and indicated that we intended to propose that health claims based on authoritative statements be permitted for use in dietary supplement labeling. We published that proposed rule in the **Federal Register** of January 21, 1999 (64 FR 3250) (Ref. 2).

Moreover, because section 403(r)(2)(G) and (r)(3)(C) of the act provide that authoritative statements from appropriate Federal scientific bodies may be the basis of nutrient content claims and health claims, we believed there was benefit in identifying key persons within each such Federal body who could provide us with information on authoritative statements if needed. At our request, the Secretary of Health and Human Services sent a letter to scientific bodies within the Public Health Service (Ref. 3) and to the U.S. Department of Agriculture (Ref. 4) requesting that they identify such a contact person.

On February 23, 1998, we received a notification containing nine prospective claims that were identified in the notification as health claims (Ref. 5). We created nine separate dockets, one for each claim, and issued a separate interim final rule responding to each claim (Refs. 6 through 14). In one of these rules (Ref. 6), we included in the preamble our thinking about the requirements of section 403(r)(2)(G), (r)(2)(H), (r)(3)(C), and (r)(3)(D) of the act as well as procedures that we would use to review notifications for claims under those provisions.

We received a number of comments on these nine interim final rules. Some comments supported the approach that we had taken and others opposed it. Some comments offered alternative approaches for our consideration. You can find these comments in Docket Nos. 98N–0419 through 98N–0424 and 98N–0426 through 98N–0428 at our Dockets Management Branch (see address in section IV of this document). In addition, on August 13, 1998 (Ref. 15), and October 26, 1998 (Ref. 16), we received congressional requests for information about the nine interim final rules. We responded to these requests on September 16, 1998 (Ref. 17), and December 8, 1998 (Ref. 18).

We believe that our efforts to implement section 304(r)(2)(G), (r)(2)(H), (r)(3)(C), and (r)(3)(D) of the act would benefit from a public meeting and an open discussion of all possible approaches to implementing these provisions. We anticipate that this discussion will be most useful to us if it involves those that commented on FDA's tentative approach and other members of the public, as well as representatives of scientific bodies that may be sources of authoritative statements.

II. Scope of Discussion

We intend that the scope of the meeting be limited to issues related to implementing section 403(r)(2)(G), (r)(2)(H), (r)(3)(C), and (r)(3)(D) of the act. More specifically, comments to the nine interim final rules raised questions concerning both the need for and the nature of a definition for ''authoritative statement.'' We seek clarification of issues and approaches that relate to these questions. These questions focused on FDA's role in overseeing the provisions that allow such claims, as well as our role in relation to the Federal scientific bodies and NAS. In addition, we seek input about which of the regulatory requirements applicable to health claims and nutrient content claims that FDA authorizes by regulation under the petition process in section 403(r)(4) of the act should apply to health claims and nutrient content claims authorized based on authoritative statements. Finally, we seek input on several definitional and procedural issues. Based on the questions and comments that we have already received, we are particularly interested in discussions of the following questions:

1. The Scientific Basis for Claims

a. What is an ''authoritative statement''?

b. Who defines ''authoritative statement''?

c. Who decides if a particular statement is an ''authoritative statement''?

d. Is the ''context'' of a statement in the publication in which it appears relevant to that determination? If so, how?

e. How does the significant scientific agreement standard apply to health claims based on authoritative statements?

2. Existing Regulatory Requirements

a. What requirements of 21 CFR 101.13 and part 101, subpart D should we apply to nutrient content claims based on authoritative statements?

b. What requirements of 21 CFR 101.14 should we apply to health claims based on authoritative statements?

3. Procedural and Definitional Issues

a. Which agencies should we identify as scientific bodies of the U.S. Government with official responsibility for public health protection or research directly relating to human nutrition under section 403(r)(2)(G)(i) and (r)(3)(C)(i) of the act?

b. Should we provide by regulation that health claims based on authoritative statements may be used in the labeling of dietary supplements?

c. What should we require that you submit with a notification of a health or nutrient content claim based on an authoritative statement?

d. Should we require you to submit in a notification an analytical methodology for measuring the substance that is the subject of your submitted claim?

e. What is a balanced presentation of the scientific literature relating to the subject to which a claim refers that is required under section 403(r)(2)(G)(ii)(III) and (r)(3)(C)(ii)(III) of the act?

f. Should FDA keep notifications confidential for 120 days after the date of their submission or should we place them in a public docket upon receipt?

g. If a notification is incomplete or does not support a claim, should we respond to it by letter or by issuing a regulation, and what should be the legal effect of letters were we to use them?

III. Registration and Requests to Make Oral Presentation

If you would like to attend the meeting, you must register with the contact person (address above) by April 27, 1999, by providing your name, title, business affiliation, address, telephone and fax number. To expedite processing, registration information may also be

faxed to 202–260–8957. If you need special accommodations due to disability, please inform the contact person when you register. If, in addition, you desire to make an oral presentation during the meeting, when you register to attend you must inform the contact person of that desire and submit: (1) A brief written statement of the general nature of the evidence or arguments that you wish to present, (2) the names and addresses of the persons who will give the presentation, and (3) an indication of the approximate time that you request to make your presentation. Depending upon the number of people who register to make presentations, we may have to limit the time allotted for each such presentation. We anticipate that, if time permits, those attending the meeting will have the opportunity to ask questions during the meeting.

IV. Comments

You may, by May 11, 1999, submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. You may also send comments to the Dockets Management Branch at the following e-mail address: ''FDADockets@bangate.fda.gov'' or via the FDA Website ''http://www.fda.gov''. You should annotate and organize your comments to identify the specific issues to which they refer. You must submit two copies of any comments, identified with the docket number found in brackets in the heading of this document, except that you may submit only one copy if you are an individual. You may see received comments in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

V. Transcripts

You may request transcripts of the meeting in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm. 12A–16, Rockville, MD 20857, approximately 15 working days after the meeting at a cost of 10 cents per page. You may also examine the transcript of the meeting after May 21, 1999, at the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday, as well as on the FDA Website ''http://www.fda.gov''.

VI. References

We have placed the following references on display in the Dockets Management Branch (address above). You may see them at that office between 9 a.m. and 4 p.m., Monday through Friday.

1. ''Guidance for Industry: Notification of a Health Claim or Nutrient Content Claim Based on an Authoritative Statement of a Scientific Body,'' June 11, 1998.

2. Food Labeling: Use on Dietary Supplements of Health Claims Based on Authoritative Statements (64 FR 3250, January 21, 1999).

3. Memorandum from Donna E. Shalala, DHHS, to scientific bodies within the Public Health Service, March 17, 1998.

4. Memorandum from Donna E. Shalala, DHHS, to The Honorable Dan Glickman, USDA, March 17, 1998.

5. Notification to Donna E. Shalala, DHHS, from Jonathan W. Emord et al., Emord & Associates, P.C., Counsel for Weider Nutrition International, Inc., February 23, 1998.

6. Food Labeling: Health Claims; Interim Final Rule; Antioxidant Vitamins C and E and the Risk in Adults of Atherosclerosis, Coronary Heart Disease, Certain Cancers, and Cataracts (63 FR 34084, June 22, 1998).

7. Food Labeling: Health Claims; Interim Final Rule; Antioxidant Vitamin A and Beta-Carotene and the Risk in Adults of Atherosclerosis, Coronary Heart Disease, and Certain Cancers (63 FR 34092, June 22, 1998).

8. Food Labeling: Health Claims; Interim Final Rule; B-Complex Vitamins, Lowered Homocysteine Levels, and the Risk in Adults of Cardiovascular Disease (63 FR 34097, June 22, 1998).

9. Food Labeling: Health Claims; Interim Final Rule; Calcium Consumption by Adolescents and Adults, Bone Density and The Risk of Fractures (63 FR 34101, June 22, 1998).

10. Food Labeling: Health Claims; Interim Final Rule; Chromium and the Risk in Adults of Hyperglycemia and the Effects of Glucose Intolerance (63 FR 34104, June 22, 1998).

11. Food Labeling: Health Claims; Interim Final Rule; Omega-3 Fatty Acids and the Risk in Adults of Cardiovascular Disease (63 FR 34107, June 22, 1998).

12. Food Labeling: Health Claims; Interim Final Rule; Garlic, Reduction of Serum Cholesterol, and the Risk of Cardiovascular Disease in Adults (63 FR 34110, June 22, 1998).

13. Food Labeling: Health Claims; Interim Final Rule; Zinc and the Body's Ability to Fight Infection and Heal Wounds in Adults (63 FR 34112, June 22, 1998).

14. Food Labeling: Health Claims; Interim Final Rule; Vitamin K and Promotion of Proper Blood Clotting and Improvement in Bone Health in Adults (63 FR 34115, June 22, 1998).

15. Letter of August 13, 1998, to Michael A. Friedman, FDA, from The Honorable Dan Burton, House of Representatives, regarding the nine interim final rules that FDA published in the **Federal Register** of June 22, 1998.

16. Letter of October 26, 1998, to Jane Henney, FDA, from The Honorable Dan Burton, House of Representatives, regarding the nine interim final rules that FDA published in the **Federal Register** of June 22, 1998.

17. Letter of September 16, 1998, to The Honorable Dan Burton, House of Representatives, from Diane E. Thompson, FDA, regarding the nine interim final rules that FDA published in the **Federal Register** of June 22, 1998.

18. Letter of December 8, 1998, to The Honorable Dan Burton, House of Representatives, from Diane E. Thompson, FDA, regarding the nine interim final rules that FDA published in the **Federal Register** of June 22, 1998.

Dated: March 18, 1999.

William K. Hubbard,

Acting Deputy Commissioner for Policy.

[FR Doc. 99–7115 Filed 3–23–99; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 1010 and 1040

[Docket No. 93N–0044]

Laser Products; Proposed Amendment to Performance Standard

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend the performance standard for laser products to achieve harmonization between the current standard and the International Electrotechnical Commission (IEC) standard for laser products and medical laser products. FDA is proposing additional changes that reflect FDA's understanding of how photobiological and behavioral factors, such as involuntary eye and body motion, affect the risk of injury from exposure. In addition, FDA is clarifying the requirement that manufacturers provide certain information to servicers. Generally, the proposed amendments will reduce the regulatory burden on affected manufacturers and improve the effectiveness of FDA's regulation of laser products. This action is being taken under the Federal Food, Drug, and Cosmetic Act as amended by Radiation Control for Health and Safety Act of 1968.

DATES: Written comments on the proposed rule should be submitted by June 22, 1999. See section IV of this document for the proposed effective date of a final rule based on this document.

ADDRESSES: Submit written comments on the proposed rule to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Jerome E. Dennis, Center for Devices and Radiological Health (HFZ–342), Food and Drug Administration, 2094 Oak Grove Rd., Rockville, MD 20850, 301–594–4654, ext. 135.

SUPPLEMENTARY INFORMATION:

I. Background

On September 23, 1992, FDA's Center for Devices and Radiological Health (CDRH) mailed to all listed manufacturers and importers of laser products and interested persons a notice that FDA was considering amendments to the Federal performance standard for laser products (§§ 1040.10 and 1040.11) (21 CFR 1040.10 and 1040.11). Accordingly, in the **Federal Register** of May 10, 1993 (58 FR 27495), FDA published a notice of intent (NOI) that informed interested persons that FDA was considering amending the performance standard for laser products to: (1) Achieve greater consistency between the performance standard and the IEC standards for laser products and medical laser products (IEC 825–1 and IEC 601–2–22); (2) improve compliance; and (3) develop a more efficient enforcement program. The NOI explained that the impetus for many of the changes under consideration stemmed largely from extensive FDA involvement in international standardization efforts for laser products with IEC, an international standards development organization with participants from many countries. The NOI also informed interested persons that additional changes to the current standard that are unrelated to harmonization were being considered as a result of FDA's continuing effort to evaluate new information and experience enforcing the present laser standard and processing variance applications.

At this time, the agency is proposing specific amendments discussed in the NOI and is also proposing additional items responding to amendments to the IEC 825–1 standard. A significant amendment to the IEC standard, which was approved in 1993, expanded the scope of the IEC 825–1 standard to include light emitting diodes (LED's) and products incorporating LED's. This amendment was approved because LED's are: (1) Very similar to semiconductor laser diodes, (2) often electrically and mechanically interchangeable with laser diodes, and (3) considered to represent similar hazards to the eyes. After the publication of IEC 825–1, considerable controversy developed because manufacturers of LED's became aware that the conditions for measuring radiant power and energy to enable product hazard classification resulted in an exaggeration of the hazard of many LED's. Unlike lasers, LED's are often extended sources (i.e., have relatively large physical dimensions) and therefore are not capable of being focussed to as small and intense a retinal image as comparable lasers. At this time, it appears that the IEC will be publishing an amendment that will partially address this concern. However, FDA is not aware of any injuries that have occurred from LED radiation. In consideration of the economic impact of including LED's in the applicability of its standard, the FDA has reconsidered its former notifications and is eliminating LED products from this proposed rulemaking. The agency believes that other remedies exist that can be used if needed and can, in the future, propose additional amendments if warranted.

FDA recognizes its responsibility not only to participate in the development of radiation safety standards for electronic products, but also to use its role in the development of the standard to demonstrate leadership and to exert influence. Although harmonization with the IEC standard is in itself a worthwhile goal, FDA disagrees with certain parts of the IEC standard. Specifically, under the IEC standard, the conditions for the measurement of radiant energy and power for the purpose of product classification contain a requirement that assumes that the output of diverging laser sources will be collected by large aperture optical instruments at a short distance from the source, and that optical components to collimate the diverging sources are currently commercially offered as accessories. FDA believes that the present IEC approach fails to allow for realistic factors of risk likely in the use of the products. FDA also believes that when collimators are offered as accessories, the classification measurements are to be made using the collimators; this situation is equivalent to offering the collimated laser product in a kit form. The entire laser product industry, however, should not be burdened with excessive classification and requirements for controls, indicators, and warnings. Therefore, FDA is proposing that measurements of radiant energy and power be made in accordance with the scheme developed by Working Group 1 of the IEC Technical Committee 76 (IEC TC76/WG1) at its meeting in Washington, DC, in February, 1995, which does not require the use of large aperture optical instruments in all cases. The IEC TC76/WG1:1995 scheme is described in section II of this document.

Another departure from the requirements of IEC 825–1 relates to the criterion for human access that applies to levels of laser radiation that are less than the accessible emission limit (AEL) of Class 2 (Class II under FDA's current standard). Such levels of radiation are considered to be ocular hazards only for exposures longer than 0.25 seconds. However, the criterion for human access is based on skin exposure, i.e., interception by any part of the human body. FDA has recently identified laser products that are classified as Class 2 but have configurations that prevent direct eye exposure. The present classification is based upon the ability to insert a part of a hand or finger into a laser field that is not recognized to be a skin hazard. FDA recognizes that the classification of an eye hazard based on the possibility of skin exposure is unnecessarily burdensome on such products and is therefore proposing to amend this criterion. Although it is acknowledged that the possibility exists for a person to insert a mirror and extract the beam, this is not considered to be a realistic risk upon which all such products need be evaluated.

II. Contents of the Proposed Regulation

Proposed §§ 1010.2(d) and 1010.3(b) (21 CFR 1010.2(d) and 1010.3(b)) authorize the Director, Office of Compliance, CDRH, to approve alternate means of providing certification and identification information. The 1985 amendments to the standard authorized the Director, Office of Compliance, to give similar approvals for labeling required by part 1040 (21 CFR part 1040). FDA is now proposing to give the Director, Office of Compliance, similar authority under §§ 1010.2 and 1010.3.

In proposed § 1040.10(d)(4), FDA is introducing the concept of reduced emission duration for classification of products for which viewing of the radiation is not intended within the range of their applications. This is to harmonize with IEC 825–1 and to reduce the burden on manufacturers of products that have been in higher classes because of the use of emission durations for classification that are unrealistically long given the use of the products. Therefore, the current Class IIa would no longer be needed, and its definition, table of AEL, and warning label requirements would be eliminated.

Under proposed § 1040.10(b), FDA would change to the use of Arabic numerals for class designations because Arabic numerals are less ambiguous. Also, changing to Arabic numerals will

harmonize with IEC 825–1 and the American National Standard Institute (ANSI) Z136.1 standards. However, FDA would not object to continued use of Roman numerals providing that the classification is correct as of the date of manufacture of the product as shown on the identification label required by § 1010.3.

Proposed § 1040.10(b)(7) redefines Class 3A (IIIa). The proposed new definition would expand the range of wavelengths included in the class and have an AEL for radiant power and energy that is five times that of Class 1 in addition to an AEL for radiant exposure and irradiance to account for increased hazard as a result of the use of collecting optics. Although the new Class 3A would exclude visible radiation if the irradiance exceeds 2.5 milliwatts per square centimeter (mW/cm^2), the performance and labeling requirement currently applicable to Class IIIa would apply to the new class.

Under proposed § 1040.10(d) and Table 1, FDA is deleting the Class 1 AEL for integrated radiance and replacing these limits with correction factors to the AEL for radiant energy and power based on the angular subtense of the radiation source. This concept is in accord with the current bioeffects science and will harmonize with IEC 825–1. Current bioeffects science indicates that repetitive pulse exposures have an increased hazard compared either to a simple summation of the individual pulses or to a continuous exposure to the same average power for the same duration. For this reason, the AEL for Class 1 should be reduced by a factor of the number of pulses raised to the negative one fourth power ($N^{-1/4}$).

The measurement parameters for radiant energy and power are those proposed by IEC TC76/WG1:1995 and endorsed by the U.S. Technical Advisory Group for that standards committee. This proposal would require two measurements for visible or near-infrared wavelengths, a 50 millimeters (mm) aperture at 2 meters (m) from the apparent source, and a 7 mm aperture at 100 mm. The measurement yielding the greater result is to be used for classification. For sources that have a high degree of divergence, the 7 mm aperture at a close distance is believed to accurately represent a worst practical viewing condition without the use of optical aides. This proposal by WG1 received a majority of the votes within IEC TC–76, but not a high enough number for acceptance. The TC–76 has, since approved, a more conservative proposal for the purpose of providing relief for LED's that can be considered to be extended sources. This more conservative approach, however, uses a 50 mm aperture at 100 mm from the apparent source and reflects the assumption that the classification will be based upon the hazard associated with viewing highly divergent sources through collecting optics, which increase the hazard. In addition, the use of the 7 mm aperture with sources that subtend greater than α_{min} permits the aperture to be placed at a distance greater than 100 mm from the apparent source. In order to be in further agreement with IEC 825–1, the aperture diameter over which the power or energy is averaged to determine the radiant exposure or irradiance is determined from a table (Table 6) and is determined by the wavelength and emission duration.

Under proposed § 1040.10(f)(5) and (f)(6), FDA would eliminate the requirements for an emission indicator and beam attenuator for systems in Class 2, 3A, and for systems in Class 3B having a visible output power of 5 mW or less. Because such systems present minimal hazard or, by virtue of the visibility of their output, give adequate warning of its presence, this relaxation is considered to be appropriate.

FDA is proposing to eliminate the requirement in § 1040.10(f)(9)(ii) that requires a scanning safeguard to determine if a change in scan parameters results from a failure or is intentional, and to react only to those changes resulting from failure. This requirement has not been invoked by the agency and has been found very difficult for the industry to understand.

Proposed § 1040.10(g) allows the use of warning logotype labels and protective housing labels that comply with IEC 825–1. The logotype labels in current § 1040.10(g) are of a design specified by ANSI. It is noted that the ANSI standard for laser safety allows use of the IEC style labels. The IEC labels for protective housings use the word ''CAUTION'' in all cases. In permitting use of the IEC labels, for consistency purposes, FDA will also permit this wording change.

The agency is not proposing significant changes to § 1040.10(h)(2)(ii); however, FDA is using this preamble to clarify the agency's interpretation of that provision in response to the evident confusion among manufacturers and servicers.

Finally, FDA is proposing to eliminate the quoted caution statement in § 1040.10(h)(1)(iv), while retaining the requirement in general terms. This proposed change will avoid otherwise unnecessary approvals or notifications and allow manufacturers to fulfill the requirement by using their own wordings for this warning.

III. Summary and Analysis of Comments and FDA's Response

The NOI set out the proposed changes to §§ 1040.10 and 1040.11 and invited comments and recommendations on such changes. Interested persons were given until August 9, 1993, to comment on the NOI. FDA received a total of 13 comments from laser product manufacturers, government organizations, a consultant, an industry association, and a professional medical association. These comments generally supported the proposed changes and the concept of harmonization with international requirements, except for the comments that follow.

1. Several comments suggested clarifying the proposed amendments to § 1040.10(d), which proposed reducing the emission durations to be used for the classification of Class 1 laser products that emit visible or infrared (IR) laser radiation not intended to be viewed, as determined from the design of the product or its intended function. These comments included the following:

A. Long-Term Viewing or Exposure

Four comments requested that FDA clarify the amendment as being applicable to products for which ''long-term'' viewing or exposure is intended or inherent in the design of the product, to differentiate between products in which viewing or exposure would only occur for short periods.

B. Products Emitting in the Near-IR Range

Four comments assumed that products which emit in the near-IR range that are classified on the basis of 100 seconds of emission would continue to be so classified, even if they are general purpose products. The comments noted that it would help to clarify the proposal by adding ''general construction'' to the applications listed for use with the 100 seconds classification time.

C. Surveying Lasers

Six comments stated that surveying lasers should not be included in the category with laboratory laser systems for a 10,000 seconds classification because they are not intended to be viewed for long durations. One comment noted that the purpose of the design of surveying lasers is to permit the beam to be viewed by electronic or mechanical devices. Two comments cited the existence of the Occupational Safety and Health Administration

regulations promoting safe use of surveying lasers. One manufacturer submitted an analysis stipulating that the current standard provides an adequate safety margin for its laser surveying products and noted that the proposed amendment would mandate a large reduction of output power for such products, which would render the technology useless.

FDA agrees with comments 1.A and 1.B of section III of this document. The proposed amendments have been drafted to incorporate the concepts and language of IEC 825–1, 1993. Although FDA agrees with the point in comment 1.C of section III of this document that invisible radiation intended for detection only by electronic means is not considered to be intended to be viewed, FDA notes that visible radiation emitted by surveying lasers that is used for leveling must be assumed to be intended to be viewed by the eyes. Further, viewing for more than 100 seconds cannot be considered to be unlikely. Therefore, the proposed 30,000 second maximum sampling interval is retained.

2. Four comments noted that the amendments to reduce the AEL for repetitively pulsed lasers should only be made if the change to reduce the time period for classification discussed in comment 1 of section III of this document is also made. If the proposed reduction in the AEL were made without reducing the time period for classification, the result would be a lowering of the allowable power for some products and an inconsistency with the IEC 825 standard. The comments also suggested that ''repetitively pulsed lasers'' be changed to ''products with scanning or repetitively pulsed outputs,'' to clarify that the requirement would also apply to scanning products.

FDA agrees with these comments and believes that the wording of the proposed amendments addresses the concern relating to the time period for classification. The clarification that the requirement applies both to repetitive pulses and scanned radiation has been made.

3. One comment suggested use of the revised ANSI AEL in the 1,150 to 2,800 nanometers (nm) spectral band rather than merely revising the AEL in the 1,535 to 1,540 nm spectral band. The comment noted that the revisions, which relate to both fiber optic exposure and so-called ''eye-safe'' laser exposure, are important to consider because of the greatly expanding technology in that spectral region.

FDA agrees that a revision of the AEL is appropriate to incorporate up-to-date understanding of the biological effects of exposure to certain spectral bands. The method used in the ANSI standard to determine the AEL is to calculate using the maximum permissible exposure. Although this is appropriate in the ANSI standard, which is primarily concerned with the safe use of lasers, FDA believes that it is appropriate to employ tables of AEL in a product standard. In addition, in the interests of global harmonization, the AEL in the proposed amendments to the standard are identical to those of IEC 825–1, which is accepted in most other countries.

4. One comment disagreed with FDA's approach in its proposal to amend the tables in § 1040.10(d) for the purpose of making the resulting classifications agree more nearly with the IEC and ANSI classifications. The comment disagreed with FDA's contention that the present structure of these tables should be retained because the existing structure is simpler than the corresponding ANSI and IEC tables. The comment stated that although the ANSI calculations are more complex, if more simplified tables (such as those in the FDA standard) result in some systems being considered more hazardous than they would be under the ANSI or IEC methods, then the more complex method should be used.

FDA partially agrees with this comment. Upon further consideration, it became clear that reformatting the IEC tables of AEL to conform to those in the present standard was practically unworkable. Therefore, the proposal contains tables of AEL that are identical to those of IEC 825–1. Further, FDA agrees that the standard should not result in an exaggeration of the hazard; therefore, the specified conditions for measurement of radiant energy and power for classification are more relaxed than those of IEC 825–1. FDA recognizes that this is a potential obstacle to harmonization and hopes that the IEC TC–76 will follow the agency's lead in this area.

5. Four comments stated that it would be helpful to clarify the amendment regarding relaxation of the laser radiation levels for which the requirements of § 1040.10(f)(2) for safety interlocks are applicable. These comments requested that FDA clarify that the relaxation discussed with regard to ''radiation emitted directly through the opening created by removal or displacement of the interlocked portion of the protective housing'' refers only to Class 3A radiation that is ''emitted out, not just any radiation level.''

FDA agrees with this comment and has inserted an explanatory note in the performance requirement for protective housing.

6. Five comments noted that the proposed interlock requirement (§ 1040.10(f)(2)) exceeds the requirements in Amendment 2 to IEC 825. One comment noted that safety interlocks are not now required by IEC 825 on Class 4 lasers and suggested a requirement that the lids of laser boxes be interlocked so that the laser turns off when the lid is lifted, or a requirement that the laser beam be fully enclosed within the box, inside a cover which is either interlocked itself or that requires a tool for removal.

FDA disagrees with this comment and notes that this performance requirement was made identical to that in the current CDRH standard in the amendments of the IEC standard that were approved in 1993. FDA has always maintained that interlock protection during operation or maintenance that entails human access to hazardous levels of laser radiation is equally appropriate for all classes of laser products.

7. Four comments noted that the proposed amendment of § 1040.10(f)(5) to require ''visible indications of actual emission from remote laser apertures of Class 3B and 4 laser systems'' exceeds the requirements of the IEC amendments, which only require such indications when the aperture could be emitting energy. The comments expressed concern that the proposed amendment, as worded, would be difficult to implement and may not provide additional safety for the user. FDA has considered these comments and decided that the proposed amendment would provide additional safety for the user and that any difficulty in implementation would be outweighed by the increase in safety. The proposed change addresses concern about some industrial workstations where the laser aperture is located at a considerable distance from either the laser or the control station. The concern is even greater for those situations in which the output of a single high power laser is shared by a number of workstations. The proposed requirements are in agreement with those under consideration by the IEC TC–76.

8. Several comments addressed the proposed amendments to warning labels, signal words, and labels for noninterlocked and defeatably interlocked protective housings. These comments are as follows:

A. Acceptance of IEC Labels

Five comments believed that the acceptance of IEC labels will ease the burden on manufacturers. Several of these comments expressed concern, however, that the differences in measurement criteria for classification between the IEC and FDA standards may cause problems and confusion. The comments noted that these problems might be addressed in the third set of amendments to the IEC standard.

B. Signal Words

One comment disagreed with eliminating the signal words ''CAUTION'' and ''DANGER'' because U.S. consumers are accustomed to the type of markings that include a signal word. The use of signal words resulted from consensus agreements between consumer and legal interests in the United States a number of years ago, and the standard 3-part marking specified in most U.S. product safety standards, which are ANSI approved, requires the use of a signal word.

C. Permission of the Word ''CAUTION'' in Place of the Word ''DANGER''

Three comments that agreed with the proposed amendment to § 1040.10(g)(6) permitting the word ''CAUTION'' in place of the word ''DANGER'' believed that this amendment should also apply to § 1040.10(g)(7).

D. Proposed Simplification

Four comments agreed with the proposed simplification of the requirements in § 1040.10(g)(6) and (g)(7) applicable to labels for noninterlocked and defeatably interlocked protective housings.

FDA is in general agreement with comment 8.A of section III of this document. Although it is true that differences in measurement criteria will cause problems and confusion for a small number of products, FDA believes that the disadvantages of adopting the present measurement criteria of IEC 825–1 outweigh the disadvantages of having different FDA and IEC criteria.

In response to comment 8.B of section III of this document, FDA believes that the benefit resulting from the use of ''CAUTION'' or ''DANGER'' is outweighed, in this case, by that of averting noncompliance through harmonized requirements.

FDA agrees with comment 8.C of section III of this document as it applies to Class 2 and certain Class 3A accessible laser radiation and collateral radiation. Proposed § 1040.10(g)(6) and (g)(7) permit use of the word ''CAUTION'' on labels for the protective housing on products emitting these levels of radiation.

Proposed § 1040.10(g)(6) and (g)(7) are simplified in accordance with the NOI and with comment 8.D of section III of this document.

9. One comment requested clarification of the proposed amendment to § 1040.11(a) requiring optical or electrical monitoring of the operation of lasers in Class 3B and 4 medical laser products. The proposed amendment states that ''an electrical or optical quantity that is directly related to the laser or LED level generated shall be continually monitored during operation.'' The comment noted that for very low repetition rate pulsed laser systems, the energy is usually measured before a procedure begins or between patient exposures. According to this comment, if an additional means of monitoring is required beyond the level of normal compliance, the ''additional means'' would be a ''significant engineering feat.'' This is because ''real-time'' monitoring of the pulsed energy during an actual treatment pulse requires an instantaneous shuttering or shutoff of the laser pulse while the specified energy level is reached. FDA believes that monitoring the voltage of a charged capacitor could satisfy this requirement for a pulsed laser system. The comment concluded that the cost of new pulsed laser systems would be increased substantially if this engineering change were required for new or existing laser systems.

FDA agrees with this comment and has clarified its intent in proposed § 1040.11(a). The item was intended to harmonize with the requirements of IEC 601–2–22 for medical laser and LED products. The present standard requires that Class 3B and 4 medical laser products incorporate a means of optical measurement of the level of laser radiation intended to be incident upon the target tissue. FDA has determined that this requirement can be met by a measurement at a location within the product or prior to emission from the distal aperture. IEC 601–2–22 addresses the same intent by imposing an accuracy specification relative to the preset or selected level. IEC 601–2–22 further requires that the operation of the laser be monitored electrically or optically, that there be an alarm if the actual monitored value differs by more than ±20 percent from the preset value, and that the user instructions specify how and when to actually measure the delivered output. Proposed § 1040.11(a) adopts these requirements.

10. One comment requested that a section be included in the amendment that certain low-power laser products be exempt from reporting. This section would condense and clarify provisions set forth in exemptions granted by Laser Notices 36, 41, and 42 and other notices as applicable. The author of the comment believes that inclusion of such a section would make this information available to the broad audience, and reduce misunderstandings associated with the administration of the regulation.

FDA agrees with this comment and believes the question has already been addressed in the amendments to part 1002 (21 CFR part 1002) published in the **Federal Register** of September 19, 1995 (60 FR 48374).

11. One comment believed that the lasers in compact disk (CD) players should be exempt from FDA regulation and should only be subject to general safety certification (UL, CSA, etc.)

FDA believes that the amendments to part 1002 have addressed this concern, but notes that the lasers themselves that are in CD players are generally Class 3B. However, when the laser is incorporated into a cell with a focusing lens, this assembly becomes the smallest component that is replaceable in service and is Class 1. Because of the low cost of such components, it is unlikely that any individual or firm would be motivated to disassemble the components and then to attempt to cause them to emit. FDA has determined that the level of laser radiation that could be accessible during service may be considered to be the maximum level accessible from the smallest replaceable component.

12. In addition, FDA has recently received inquiries, suggestions, and one trade complaint concerning the interpretation of § 1040.10(h)(2)(ii), which requires manufacturers of laser products to provide adequate instructional information to servicers and others upon request. Although the correspondence does not directly relate to the advanced notice of proposed rulemaking, the agency believes this proposal is an appropriate forum for presenting its construction of the current regulation and inviting comment from interested persons.

The correspondence FDA has received has reflected disagreement between manufacturers and independent servicers of laser products about whether the regulation authorizes manufacturers to interpret ''adequate'' to include training provided by the manufacturer. The agency believes that it is appropriate for the manufacturer to decide, in the first instance, what constitutes ''adequate'' servicing instructions. If the agency learns, however, through the inspection of laser

manufacturing facilities or otherwise, that manufacturers are using the requirement of ''adequate'' as a pretext for making the provision of servicing instructions contingent upon costly or burdensome training, FDA will deem the manufacturer's product to be noncompliant with the laser performance standard and will take appropriate regulatory action.

IV. Effective Date

FDA proposes that any final rule that may issue based on this proposal become effective 1 year after the date of publication of the final rule in the **Federal Register**.

V. Environmental Impact

The agency has determined under 21 CFR 25.34(c) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VI. Analysis of Impacts

FDA has examined the impact of the proposed rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612) (as amended by subtitle D of the Small Regulatory Fairness Act of 1966 (Pub. L. 104–121)), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this proposed rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the proposed rule is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because this rule in many instances decreases the regulatory burden from that imposed by the current regulations and increases the level of consistency between Federal law and international law to which small entities may be subject, the agency certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities. In addition, this proposed rule will not impose costs of $100 million or more in either the private sector or State, local, and tribal governments in the aggregate, and therefore a summary statement of analysis under section 202(a) of the Unfunded Mandates Reform Act is not required.

VII. Paperwork Reduction Act of 1995

This proposed rule contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The burden hours required for § 1040.10(a)(4)(i), (h)(1)(i) through (h)(1)(vi), (h)(2)(i) and (h)(2)(ii), (i), and § 1040.11(a)(2)(iv) are reported and approved under OMB control number 0910–0213.

VIII. Comments

Interested persons may, on or before June 22, 1999, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in the brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects

21 CFR Part 1010

Administrative practice and procedures, Electronic products, Exports, Radiation protection.

21 CFR Part 1040

Electronic products, Labeling, Lasers, Medical devices, Radiation protection, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR parts 1010 and 1040 be amended as follows:

PART 1010—PERFORMANCE STANDARDS FOR ELECTRONIC PRODUCTS: GENERAL

1. The authority citation for 21 CFR part 1010 is revised to read as follows:

Authority: 21 U.S.C. 351, 352, 360, 360e–360j, 360hh–360ss, 371, 381.

2. Section 1010.2 is amended by revising paragraph (d) to read as follows:

§ 1010.2 Certification.

* * * * *

(d) In the case of products for which it is not feasible to certify in accordance with paragraph (b) of this section, upon application by the manufacturer or upon his or her initiative, the Director, Office of Compliance, Center for Devices and Radiological Health, may approve an alternate means by which such certification may be provided.

3. Section 1010.3 is amended by revising paragraph (b) to read as follows:

§ 1010.3 Identification.

* * * * *

(b) In the case of products for which it is not feasible to affix identification labeling in accordance with paragraph (a) of this section, upon application by the manufacturer or upon his or her initiative, the Director, Office of Compliance, Center for Devices and Radiological Health, may approve an alternate means by which such identification may be provided.

* * * * *

PART 1040—PERFORMANCE STANDARDS FOR LIGHT–EMITTING PRODUCTS

4. The authority citation for 21 CFR part 1040 continues to read as follows:

Authority: 21 U.S.C. 351, 352, 360, 360e–360j, 371, 381; 42 U.S.C. 263b–263n.

5. Section 1040.10 is revised to read as follows:

§ 1040.10 Laser products.

(a) *Applicability*. The provisions of this section and § 1040.11, as amended, are applicable as specified to all laser products manufactured or assembled after (date 1 year after date of publication in the **Federal Register** of any final rule that issues based on this proposed rule), except when:

(1) Such a laser cannot under any conditions of operation, maintenance, service, or single failure emit radiation in excess of the accessible emission limits of a Class 1 laser product, or

(2) Such a laser is sold to a manufacturer of an electronic product for use as a component (or replacement) in such electronic product, or

(3) Such a laser is sold by or for a manufacturer of an electronic product for use as a component (or replacement) in such electronic product, provided that such laser:

(i) Is accompanied by a general warning notice that adequate instructions for the safe installation of the product are provided in servicing information available from the complete product manufacturer under paragraph (h)(2)(ii) of this section, and should be followed,

(ii) Is labeled with a statement that it is designated for use solely as a component of such electronic product and therefore is not required to comply with the appropriate requirements of this section and § 1040.11 for complete laser products, and

(iii) Is not a removable laser system as described in paragraph (c)(2) of this section; and

(4) The manufacturer of such a laser product, if manufactured after August 20, 1986,

(i) Registers and provides a listing by type of such laser products manufactured that includes the product name, model number, and laser medium or emitted wavelength(s). The registration and listing shall include the name and address of the manufacturer and shall be submitted to the Director, Office of Compliance (HFZ–342), Center for Devices and Radiological Health, 2098 Gaither Rd., Rockville, MD 20850; and

(ii) Maintains and allows access to any sales, shipping, or distribution records that identify the purchaser of such a laser product by name and address, the product by type, the number of units sold, and the date of sale (shipment). These records shall be maintained and made available as specified in § 1002.31 of this chapter.

(b) *Definitions*. As used in this section and § 1040.11, the following definitions apply:

(1) *Accessible emission level* means the magnitude of accessible laser or collateral radiation of a specific wavelength and emission duration at a particular point as measured according to paragraph (e) of this section. Accessible laser or collateral radiation is radiation to which human access is possible.

(2) *Accessible emission limit* means the maximum accessible emission level permitted within a particular class as set forth in paragraphs (c) and (d) of this section when measured according to paragraph (e) of this section.

(3) *Aperture* means any opening in the protective housing or other enclosure of a laser product through which laser or collateral radiation is emitted, thereby allowing human access to such radiation.

(4) *Aperture stop* means an opening serving to limit the size and to define the shape of the area over which radiation is measured.

(5) *Class 1 laser* means any laser that does not permit access during the operation to levels of laser radiation in excess of the accessible emission limits contained in Table 1 of paragraph (d) of this section.[1]

(6) *Class 2 laser* means any laser that permits human access during operation to levels of visible laser radiation in excess of the accessible emission limits contained in Table 1 in paragraph (d) of this section, but does not permit human access during operation to levels of laser radiation in excess of the accessible emission limits contained in Table 2 of paragraph (d) of this section.[2]

(7) *Class 3A laser* means any laser that permits human access during operation to levels of visible laser radiation in excess of the accessible emission limits contained in Table 2 of paragraph (d) of this section, but does not permit human access during operation to levels of laser radiation in excess of the accessible emission limits contained in Table 3 of paragraph (d) of this section.[3]

(8) *Class 3B laser product* means any laser product that permits human access during operation to levels of laser radiation in excess of the accessible emission limits of Table 3 of paragraph (d) of this section, but does not permit human access during operation to levels of laser radiation in excess of the accessible emission limits contained in Table 4 of paragraph (d) of this section.[4]

(9) *Class 3 laser product* means any Class 3A or Class 3B laser product.

(10) *Class 4 laser product* means any laser product that permits human access during operation to levels of laser radiation in excess of the accessible emission limits contained in Table 4 of paragraph (d) of this section.[5]

(11) *Collateral radiation* means any electronic product radiation, except laser radiation, emitted by a laser product as a result of the operation of the laser(s) or any component of the laser product that is physically necessary for the operation of the laser(s).

(12) *Demonstration laser product* means any laser product manufactured, designed, intended, or promoted for purposes of demonstration, entertainment, advertising display, or artistic composition. The term ''demonstration laser product'' does not apply to laser products which are not manufactured, designed, intended, or promoted for such purposes, even though they may be used for those purposes or are intended to demonstrate other applications.

(13) *Emission duration* means the temporal duration of a pulse, a series of pulses, or continuous operation, expressed in seconds, during which human access to laser or collateral radiation could be possible as a result of operation, maintenance, or service of a laser product.

(14) *Human access* means the capacity to intercept laser or collateral radiation by any part of the human body. For laser products that contain Class 3B or 4 levels of laser radiation, ''human access'' also means access to laser radiation that can be reflected directly onto any part of the human body by any single introduced flat surface from the interior of the product through any opening in the protective housing of the product.

(15) *Invisible radiation* means laser or collateral radiation having wavelengths of equal to or greater than 180 nm but less than or equal to 400 nm or greater than 700 nm but less than or equal to 1,000,000 nm (1 millimeter).

(16) *Irradiance* means the time-averaged radiant power incident on an element of a surface divided by the area of that element, expressed in watts per square centimeter.

(17) *Laser* means any device that can be made to produce or amplify electromagnetic radiation at wavelengths greater than 180 nm but less than or equal to 1,000,000 nm (1 millimeter) primarily by the process of controlled stimulated emission.

(18) *Laser energy source* means any device intended for use in conjunction with a laser to supply energy for the operation of the laser. General energy sources such as electrical supply mains or batteries shall not be considered to constitute laser energy sources.

(19) *Laser product* means any manufactured product or assemblage of components which constitutes, incorporates, or is intended to incorporate a laser or laser system. A laser or laser system that is intended for use as a component of an electronic product shall itself be considered a laser product.

(20) *Laser radiation* means all electromagnetic radiation emitted by a laser product within the spectral range specified in paragraph (b)(17) of this section that is produced as a result of controlled stimulated emission or that is detectable with radiation so produced through the appropriate aperture stop as

[1] Class 1 levels of laser or radiation are not considered to be hazardous.

[2] Class 2 levels of laser radiation are considered to be a chronic viewing hazard.

[3] Class 3A levels of laser radiation are considered to be either an acute viewing hazard at visible or near-infrared (700 to 1,400 nanometers (nm)) wavelengths if viewed directly with optical instruments, or a nominal hazard at wavelengths outside these ranges.

[4] Class 3B levels of laser radiation are considered to be an acute hazard to the skin and eyes from direct radiation.

[5] Class 4 levels of laser radiation are considered to be an acute hazard to the skin and eyes from direct and scattered radiation.

specified in paragraph (e) of this section.

(21) *Laser system* means a laser in combination with an appropriate laser energy source with or without additional incorporated components. See paragraph (c)(2) of this section for an explanation of the term ''removable laser system.''

(22) *Maintenance* means performance of those adjustments or procedures specified in user information provided by the manufacturer with the laser product which are to be performed by the user for the purpose of assuring the intended performance of the product. It does not include operation or service as defined in paragraphs (b)(27) and (b)(37) of this section.

(23) *Maximum output* means the maximum radiant power and, where applicable, the maximum radiant energy per pulse of accessible laser radiation emitted by a laser product during operation, as determined under paragraph (e) of this section.

(24) *Maximum angular subtense* means the value of angular subtense of the apparent source above which the AEL's are independent of the source size (α_{max} = 0.1 rad (100 mrad)).

(25) *Medical laser* means any laser product which is a medical device as defined in 21 U.S.C. 321(h) and is manufactured, designed, intended, or promoted for in vivo laser irradiation of any part of the human body for the purpose of:

(i) Diagnosis, surgery, or therapy; or

(ii) Relative positioning of the human body.

(26) *Minimum angular subtense* means the value of angular subtense of the apparent source above which the source is considered to be an extended source. Maximum permissible exposures (MPE's) and AEL's are independent of source size for angles less than the minimum angular subtense (α_{min}).

α_{min} = 0.0015 rad $t \leq 0.7s$

$0.002t^{3/4}$ rad $0.7s \leq t \leq 10s$

0.01rad $t \leq 10s$

(27) *Operation* means the performance of the laser product over the full range of its functions. It does not include maintenance or service as defined in paragraphs (b)(22) and (b)(37) of this section.

(28) *Protective housing* means those portions of a laser product which are designed to prevent human access to laser or collateral radiation in excess of the prescribed accessible emission limits under conditions specified in this section and in § 1040.11.

(29) *Pulse duration* means the time increment measured between the half-peak-power points at the leading and trailing edges of a pulse.

(30) *Radiant energy* means energy emitted, transferred or received in the form of radiation, expressed in joules (J).

(31) *Radiant exposure* means the radiant energy incident on an element of a surface divided by the area of the element, expressed in joules per square centimeter (Jcm^{-2}).

(32) *Radiant power* means time-averaged power emitted, transferred or received in the form of radiation, expressed in watts (W).

(33) *Remote interlock connector* means an electrical connector which permits the connection of external remote interlocks.

(34) *Safety interlock* means a device associated with the protective housing of a laser product to prevent human access to excessive radiation in accordance with paragraph (f)(2) of this section.

(35) *Sampling interval* means the time interval during which the level of accessible laser or collateral radiation is sampled by a measurement process. The magnitude of the sampling interval in units of seconds is represented by the symbol (t).

(36) *Scanned laser radiation* means laser radiation having a time-varying direction, origin or pattern of propagation with respect to a stationary frame of reference.

(37) *Service* means the performance of those procedures or adjustments described in the manufacturer's service instructions which may affect any aspect of the product's performance for which this section and § 1040.11 have applicable requirements. It does not include maintenance or operation as defined in paragraphs (b)(22) and (b)(27) of this section.

(38) *Surveying, leveling, or alignment laser product* means a laser product manufactured, designed, intended, or promoted for one or more of the following uses:

(i) Determining and delineating the form, extent, or position of a point, body, or area by taking angular measurement;

(ii) Positioning or adjusting parts in proper relation to one another; and

(iii) Defining a plane, level, elevation, or straight line.

(39) *Visible radiation* means laser or collateral radiation having wavelengths of greater than 400 nm but less than or equal to 700 nm.

(40) *Warning logotype* means a logotype as illustrated in either Figure 1 or Figure 2 of paragraph (g) of this section.

(41) *Wavelength* means the propagation wavelength in air of electromagnetic radiation.

(c) *Classification of laser*—(1) *All laser products.* Each laser shall be classified in Class 1, 2, 3A, 3B, or 4 in accordance with definitions set forth in paragraphs (b)(5) through (b)(10) of this section. The product classification shall be based on the highest accessible emission level(s) of laser radiation to which human access is possible during operation in accordance with paragraphs (d), (e), and (f)(1) of this section.

(2) *Removable laser systems.* Any laser system that is incorporated into a laser product subject to the requirements of this section and that is capable, without modification, of producing laser radiation when removed from such laser product, shall itself be considered a laser product and shall be separately subject to the applicable requirements in this subchapter for laser products of its class. It shall be classified on the basis of the accessible emission level of laser radiation the system is capable of producing when so removed.

(d) *Accessible emission limits.* Accessible emission limits for laser radiation in each class are specified in Tables 1, 2, 3, and 4 of this paragraph. Accessible emission limits for collateral radiation are specified in Table 7 of this paragraph.

NOTE APPLICABLE TO TABLES 1, 2, 3, 4, AND 6

The variable t in the expressions of emission limits is the magnitude of the sampling interval in units of seconds.

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Table 1 - Accessible emission limits for Class 1 laser products

Emission Duration t (s) / Wave-length λ	$< 10^{-9}$	10^{-9} to 10^{-7}	10^{-7} to 1.8×10^{-5}	1.8×10^{-5} to 5×10^{-5}	5×10^{-7} to 1×10^{-3}	1×10^{-3} to 3	3 to 10	10 to 10^{3}	10^{3} to 10^{4}	10^{4} to 3×10^{4}
180 to 302.5	2.4×10^{4} W	2.4×10^{-5} J								
302.5 to 315		$7.9\times10^{-7}C_1$ J ($t<T_1$)			$7.9\times10^{-7}C_2$ J ($t>T_1$)			$7.9\times10^{-7}C_2$ J		
315 to 400		$7.9\times10^{-7}C_1$ J						7.9×10^{-3} J	7.9×10^{-6} W	
400 to 550	$200C_6$ W	$2\times10^{-7}C_6$ J		$7\times10^{-4}t_{0.75}C_6$ J				$3.9\times10^{-3}C_6$ J		$3.9\times10^{-7}C_6$ W
550 to 700								($t<T_2$) $7\times10^{-4}t^{0.75}$ J / $3.9\times10^{-3}C_3C_6$ J ($t>T_2$)		$3.9\times10^{-7}C_3C_6$ W
700 to 1,050	200 C_4C_6 W	$2\times10^{-7}C_4C_6$ J		$7\times10^{-4}t^{0.75}C_4C_6$ J					$1.2\times10^{-4}C_4C_6$ W	
1,050 to 1,400	$3\times10^{3}C_6C_7$ W	$2\times10^{-6}C_6C_7$ J			$3.5\times10^{-3}t^{0.75}C_6C_7$ J				$6\times10^{-4}C_6C_7$ W	
1,400 to 1,500	$8X10^{5}$ W	8×10^{-4} J					$4.4\times10^{-3}t^{0.25}$ J	$5.4\times10^{-2}t^{0.25}$ J	10^{-2} W	
1,500 to 1,800	8×10^{6} W	8×10^{-3} J						0.1 J		
1,800 to 2,600	8×10^{5} W	8×10^{-4} J					$4.4\times10^{-3}t^{0.25}$ J	$5.4\times10^{-2}t^{0.25}$ J		
2,600 to 4,000	8×10^{4} W	8×10^{-5} J	$4.4\times10^{-3}t^{0.25}$ J							
4,000 to 10^{6}	10^{7} W•cm^{-2}	10^{-2} J•cm^{-2}	$0.56\times10^{-1}t^{0.25}$ J•cm^{-2}						0.1 W•cm^{-2}	

For correction factors and units, see table 5.

Table 2 - Accessible emission limits for Class 2 laser products

Wavelength λ nm	Emision duration t s	Class 2 AEL
400 to 700	t = < 0.25	Same as Class 1 AEL
	t = > 0.25	$C_6 \times 10^{-3}$ W*

*For correction factors and units see Table 5

Table 3 - Accessible emission limits for Class 3A laser products

Wave-length λ \ Emission Duration t (s)	$<10^{-9}$	10^{-9} to 10^{-7}	10^{-7} to 1.8×10^{-5}	1.8×10^{-5} to 5×10^{-5}	5×10^{-5} to 1×10^{-3}	1×10^{-3} to 0.25	0.25 to 3	3 to 10	10 to 10^{3}	10^{3} to 3×10^{4}
180 to 302.5	1.2×10^{5} W and 3×10^{6} W•cm^{-2}	1.2×10^{-4} J and 3×10^{-3} J•cm^{-2}								
302.5 to 315		$4\times10^{-6}C_1$ J and $10^{-4}C_1$ J•cm^{-2} ($t<T_1$)					$4\times10^{-6}C_2$ J and $10^{-4}C_2$ J•cm^{-2} ($t>T_1$)		$4\times10^{-6}C_2$ J and $10^{-4}C_2$ J•cm^{-2}	
315 to 400		$4\times10^{-6}C_1$ J and $10^{-4}C_1$ J•cm^{-2}							4×10^{-2} J and 1 J•m^{-2}	4×10^{-5} W and 10^{-3} W•cm^{-2}
400 to 700	1,000 C_6 W and 500 C_6 W•cm^{-2}	$10^{-6}C_6$ J and $0.5\times10^{-7}C_6$ J•cm^{-2}		$3.5\times10^{-3}t^{0.75}C_6$ J and $1.8\times10^{-3}C_6$ J•cm^{-2}			$5\times10^{-3}C_6$ W and 2.5×10^{-3} W•cm^{-2}			
700 to 1,050	1,000C_4C_6 W and 500C_4C_6 W•cm^{-2}	$10^{-6}C_4C_6$ J and $5\times10^{-7}C_4C_6$ J•cm^{-2}		$3.5\times10^{-3}t^{0.75}C_4C_6$ J and $1.8\times10^{-3}C_4C_6$ J•cm^{-2}						$6\times10^{-4}C_4C_6$ W and $3.2\times10^{-4}C_4C_6$ W•cm^{-2}
1,050 to 1,400	$10^{4}C_6C_7$ W and $5\times10^{3}C_6C_7$ W•cm^{-2}	$10^{-5}C_6C_7$ J and $5\times10^{-6}C_6C_7$ J•cm^{-2}			$1.8\times10^{-2}t^{0.75}C_6C_7$ J and $9\times10^{-3}t^{0.75}C_6C_7$ J•cm^{-2}					$3\times10^{-3}C_6C_7$ W and $1.6\times10^{-2}C_6C_7$ W•cm^{-2}
1,400 to 1,500	4×10^{6} W and 10^{8} W•cm^{-2}	4×10^{-3} J and 0.1 J•cm^{-2}				$2.2\times10^{-2}t^{0.25}$ J and $0.56t^{0.25}$ J•cm^{-2}		$0.27t^{0.25}$ J and $0.56t^{0.25}$ J•cm^{-2}	5×10^{-2} W and 0.1 W•cm^{-2}	
1,500 to 1,800	4×10^{7} W and 10^{9} W•cm^{-2}	4×10^{-2} J and 1 J•cm^{-2}						0.5 J and 1 J•cm^{-2}		
1,800 to 2,600	4×10^{6} W and 10^{8} W•cm^{-2}	4×10^{-3} J and 0.1 J•cm^{-2}				$2.2\times10^{-2}t^{0.25}$ J and $0.56t^{0.25}$ J•cm^{-2}		$0.27t^{0.25}$ J and $0.56t^{0.25}$ J•cm^{-2}		
2,600 to 4,000	4×10^{5} W and 10^{7} W•cm^{-2}	4×10^{-4} J and 0.01 J•cm^{-2}	$2.2\times10^{-2}t^{0.25}$ J and $0.56t^{0.25}$ J•cm^{-2}							
4,000 to 10^{6}	10^{7} W•cm^{-2}	0.01 J•cm^{-2}	$0.56t^{0.25}$ J•cm^{-2}						0.1 W•cm^{-2}	

For correction factors and units, see table 5.

Table 4 - Accessible emission limits for Class 3B laser products

Wavelength λ nm \ Emission duration t s	$< 10^{-9}$	10^{-9} to 0.25	0.25 to $3x10^4$
180 to 302.5	$3.8x10^5$ W	$3.8x10^{-4}$ J	$1.5x10^{-3}$ W
302.5 to 315	$1.25x10^4 C_2$ W	$1.25x10^{-5} C_2$ J	$5x10^{-5} C_2$ W
315 to 400	$1.25x10^8$ W	0.125 J	0.5 W
400 to 700	$3x10^7$ W	0.03 J for t< 0.06 s 0.5 W for t ≥ 0.06 s	0.5 W
700 tp 1,050	$3x10^7 C_4$W	$0.03C_4$ J for t < $0.06C_4$ s 0.5 W for t ≥ $0.06C_4$ s	0.5 W
1,050 to 1,400	$1.5x10^8$ W	0.15 J	0.5 W
1,400 to 10^6	$1.25x10^8$ W	0.125 J	0.5 W
For correction factors and units, see Table 5			

Table 5 - Notes to Tables 1 to 4

Parameter	Spectral Range nm
$C_1 = 5.6 \times 10^3 t^{0.25}$	302.5 to 400
$T_1 = 10^{0.8(\lambda-295)} \times 10^{-15} s$	302.5 to 315
$C_2 = 10^{0.2(\lambda-295)}$	302.5 to 315
$T_2 = 10 \times 10^{0.02(\lambda-550)} s$	550 to 700
$C_3 = 10^{0.015(\lambda-550)}$	550 to 700
$C_4 = 10^{0.002(\lambda-700)}$	700 to 1,050
$C_5 = N^{-1/4}$ (for pulse durations < 0.25 s)	400 to 10^6
$C_6 = 1$ (for $\alpha \leq \alpha_{min}$)	400 to 1,400
$C_6 = \alpha/\alpha_{min}$ for $\alpha_{min} < \alpha \leq \alpha_{max}$	400 to 1,400
$C_6 = \alpha_{max}/\alpha_{min}$ for $\alpha > \alpha_{max}$	400 to 1,400
$C_7 = 1$	1,050 to 1,150
$C_7 = 10^{0.018(\lambda-1150)}$	1,150 to 1,200
$C_7 = 8$	1,200 to 1,400

Table 6 - Apertures for the Determination of Irradiance or Radiant Exposure

Spectral region nm	Duration s	Aperture diameter for	
		Eye mm	Skin mm
180 to 400	$t \leq 3X10^4$	1	1
400 to 1,400	$t \leq 3X10^4$	7	3.5
1,400 to 10^5	$t \leq 3$	1	1
1,400 to 10^5	$t > 3$	3.5	3.5
10^5 to 10^6	$t \leq 3X10^4$	11	11

TABLE 7

ACCESSIBLE EMISSION LIMITS FOR COLLATERAL

RADIATION FROM LASER OR LED PRODUCTS

1. Accessible emission limits for collateral radiation having wavelengths greater than 180 nanometers but less than or equal to 1.0 X 10^6 nanometers are identical to the accessible emission limits for Class 1 laser or LED radiation.

i. In the wavelength range of less than or equal to 400 nanometers, for all emission durations;

ii. In the wavelength range of greater than 400 nanometers, for all emission durations less than or equal to 1 X 10^3 seconds, and when applicable under paragraph (f)(8) of this section, for all emission durations.

2. Accessible emission limit for collateral radiation within the x-ray range of wavelengths is 0.5 milliroentgen in an hour, averaged over a cross-section parallel to the external surface of the product, having an area of 10 square centimeters with no dimension greater than 5 centimeters.

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(1) *Beam of a single wavelength.* Laser or collateral radiation single wavelength exceeds the accessible emission limits of a class if its accessible emission level is greater than the accessible emission limit of that class within any of the ranges of emission duration specified in Tables 1, 2, 3, and 4 of this paragraph.

(2) *Beam of multiple wavelengths in same range.* Laser or collateral radiation having two or more wavelengths within any one of the wavelength ranges specified in Tables 1, 2, 3, and 4 of this paragraph exceeds the accessible emission limits of a class if the sum of the ratios of the accessible emission level to the corresponding accessible emission limit at each such wavelength is greater than unity for that combination of emission duration and wavelength distribution which results in the maximum sum.

(3) *Beam with multiple wavelengths in different ranges.* Laser or collateral radiation having wavelengths within two or more of the wavelength ranges specified in Tables 1, 2, 3, and 4 of this paragraph exceeds the accessible emission limits of a class if it exceeds the applicable limits within any one of those wavelength ranges. This determination is made for each wavelength range in accordance with paragraph (d)(1) or (d)(2) of this section.

(4) *Maximum sampling interval.* Three maximum sampling intervals are used for the classification of laser. Which interval applies depends upon the accessible emission level of the product and whether viewing the radiation is an inherent feature of the product. The accessible emission limits of a class are exceeded, if exceeded within any emission duration less than or equal to the following maximum sampling intervals:

(i) 30,000 seconds for wavelengths less than or equal to 400 nm and for wavelengths greater than 400 nm if intentional viewing of the radiation is inherent in the design or function of the product, or

(ii) 100 seconds for wavelengths greater than 400 nm unless intentional viewing of the radiation is inherent in the design or function of the product.

(iii) 0.25 seconds for Class 2 and for Class 3A laser radiation within the wavelength range from 400 to 700 nm.

(5) *Repetitively pulsed or scanned laser radiation.* For repetitively pulsed or scanned laser radiation in the wavelength range from 400 nm to 1,000,000 nm (1 millimeter) the AEL is determined by using the most restrictive of requirements in paragraphs (d)(4)(i), (d)(4)(ii), and (d)(4)(iii) of this section as appropriate. For wavelengths less than 400 nm, the AEL is determined by using the most restrictive of requirements in paragraphs (d)(4)(i) and (d)(4)(ii) of this section.

(i) The emission level of any single pulse within a pulse train shall not exceed the AEL for a single pulse.

(ii) The average power of a pulse train of duration t shall not exceed the power corresponding to the AEL given in Tables 1, 2, 3, and 4 of this paragraph, respectively, for a single pulse of duration t.

(iii) The emission level of any single pulse within a pulse train shall not exceed the AEL for a single pulse multiplied by the correction factor C_5:

$AEL_{train} = AEL_{single} \times C_5$

NOTE: C_5 is only applicable to pulse durations shorter than 0.25 sec. where:

AEL_{train} = AEL for any single pulse in the pulse train

AEL_{single} = AEL for a single pulse

$C_5 = N^{-1/4}$

N = number of pulses in the pulse train during the sampling interval.

NOTE: In some cases, AEL_{train} this value may fall below the AEL that would apply for continuous operation at the same peak power using the same time base. Under these circumstances, the AEL for continuous operation may be used.

(e) *Tests for determination of compliance*—(1) *Tests for certification.* Tests on which certification under

§ 1010.2 of this chapter is based shall account for all errors and statistical uncertainties in the measurement process. Because compliance with the standard is required for the useful life of a product, such tests shall also account for increases in emission and degradation in radiation safety with age.

(2) *Test conditions.* Except as provided in § 1010.13 of this chapter, tests for compliance with each of the applicable requirements of this section and § 1040.11 shall be made as appropriate during operation, maintenance, service, or single failure as follows:

(i) Under those conditions and procedures that maximize the accessible emission levels, including start-up, stabilized emission, and shut-down of the laser product; and

(ii) With all controls and adjustments listed in the operation, maintenance, and service instructions adjusted in combination to result in the maximum accessible emission level of radiation; and

(iii) At locations where human access to laser radiation is possible, e.g., if operation may require removal of portions of the protective housing and defeat of safety interlocks, measurements shall be made at points accessible in that product configuration; and

(iv) With the measuring instrument detector so positioned and so oriented with respect to the laser product as to result in the maximum detection of radiation by the instrument; and

(v) For a laser product other than a laser system, with the laser connected to that type of laser energy source that is specified as compatible by the laser product manufacturer and that produces the maximum emission level of accessible radiation from that product.

(3) *Measurement parameters.* Accessible emission levels of laser and collateral radiation shall be based upon the measurements in paragraph (e)(3)(i) of this section as appropriate, or their equivalent. For the purposes of the measurements in paragraphs (e)(3)(i)(A) through (e)(3)(i)(D), and paragraph (e)(3)(ii) of this section, the 50-millimeter aperture will be the limiting case with collimated beams, and the measurement distances referring to the apparent source are measured from the apparent source irrespective of any optical element placed between the source and the measurement aperture.

(i) Radiant power (W) or radiant energy (J) measurable under the following conditions:

(A) Within a circular aperture stop of 50-millimeter diameter placed at a distance of 2 meters from the closest point of human access. In general, the 50-millimeter aperture will be the limiting case with collimated beams, or

(B) In the wavelength range from 400 nm to 1,400 nm within a circular aperture stop of 7-millimeter diameter placed at a distance of 100 millimeters from the apparent source.

(C) For apparent sources subtending an angle (α) (measured at a minimum distance of 100 millimeters) less than α_{max} and within the wavelength range from 400 nm to 1,400 nm, within a circular aperture stop of 7-millimeter diameter positioned at a distance (r) from the source depending upon the angular subtense α (between a minimum of 1.5 mrad and a maximum of α_{max}) of the source. The distance (r) of the 7-millimeter measurement aperture from the source is determined by:

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$$r = (100\ mm)\sqrt{\frac{\alpha + 0.46\ mrad}{\alpha_{max}}}$$

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NOTE: In cases where the apparent source is recessed within the product at a distance greater than that specified in paragraph (e)(3)(i)(B) or (e)(3)(i)(C) of this section, the minimum measurement distance should be at the closest point of human access, such as the exit window or lens. This measurement is needed to determine the user information required for Class 1 laser products (see paragraph (h)(1)(vi) of this section).

(D) For wavelengths less than 400 nm and greater than 1,400 nm, within a circular aperture stop of 7-millimeter diameter (or as otherwise specified) placed at a distance of 14 millimeters from the closest point of human access.

(E) For the calculation of the AEL expressed in terms of radiant power, radiant energy, irradiance, or radiant exposure, the value of the angular subtense of a rectangular or linear source is determined by the arithmetic mean of the two angular dimensions of the source. Any angular dimension that is greater than α_{max} or less than α_{min} shall be limited to α_{max} or α_{min}, respectively, prior to calculating the mean.

(F) For scanned laser radiation, the direction of the solid angle of acceptance shall change as needed to maximize detectable radiation, with an angular speed of up to 5 radians/second.

(ii) The irradiance (Wcm^{-2}) or radiant exposure (Jcm^{-2}) equivalent to the radiant power (W) or radiant energy (J) measurable through a circular aperture stop having a diameter as specified in Table 6 of paragraph (d) of this section shall be divided by the area of the aperture stop.

(f) *Performance requirements*—(1) *Protective housing.* Each laser product shall have a protective housing that prevents human access during operation to laser and collateral radiation that exceed the limits of Tables 1 or 7 of paragraph (d) of this section wherever and whenever such human access is not necessary for the product to perform its intended function. Wherever and whenever human access to laser radiation levels that exceed the limits of Class 1 is necessary, these levels shall not exceed the limits of the lowest class necessary to perform the intended function(s) of the product.

NOTE: If there is an opening or openings, such as for cooling, in a protective housing that encloses Class 3B or 4 levels of laser radiation, the adequacy of the protective housing shall be determined by whether the level of radiation that can be reflected out through the opening(s) by a single flat reflector exceeds the accessible emission limits of Class 1.

(2) *Safety interlocks*—(i) Each laser, regardless of its class, shall be provided with at least one safety interlock for each portion of the protective housing which is designed to be removed or

displaced during operation or maintenance, if removal or displacement of the protective housing could permit, in the absence of such interlock(s), human access to:

(A) Laser radiation in excess of the accessible emission limits of Class 3A; or

(B) Laser radiation in excess of the accessible emission limits of Class 2 to be emitted directly through the opening created by removal or displacement of the interlocked portion of the protective housing.

(ii) Each required safety interlock, unless defeated, shall prevent human access to laser radiation as described in paragraphs (f)(2)(i)(A) through (f)(2)(i)(B) of this section upon removal or displacement of such portion of the protective housing.

(iii) Either multiple safety interlocks or a means to preclude removal or displacement of the interlocked portion of the protective housing shall be provided, if failure of a single interlock would allow:

(A) Human access to a level of laser radiation in excess of the accessible emission limits of Class 3A; or

(B) Laser radiation in excess of the accessible emission limits of Class 2 to be emitted directly through the opening created by removal or displacement of the interlocked portion of the protective housing.

(iv) Laser products that incorporate safety interlocks designed to allow safety interlock defeat shall incorporate a means of visual or aural indication of interlock defeat. During interlock defeat, such indication shall be visible or audible whenever the laser product is energized, with and without the associated portion of the protective housing removed or displaced.

(v) Replacement of a removed or displaced portion of the protective housing shall not be possible while required safety interlocks are defeated.

(3) *Remote interlock connector*. Each laser system classified as a Class 3B or 4 laser product, except for Class 3B with not more than five times the AEL of Class 2 in the wavelength range of 400 to 700 nm, shall incorporate a readily available remote interlock connector having an electrical potential difference of no greater than 130 root-mean-square volts between terminals. When the terminals of the connector are not electrically joined, human access to all laser and collateral radiation from the laser product in excess of the accessible emission limits of Class 1 and Table 7 of paragraph (d) of this section shall be prevented.

(4) *Key control*. Each laser system classified as a Class 3B or 4 laser product, except for Class 3B with not more than five times the AEL of Class 2 in the wavelength range of 400 to 700 nm, shall incorporate a key-actuated master control. The key shall be removable and the laser shall not be operable when the key is removed.

(5) *Laser radiation emission indicator*—(i) Each laser system classified as a Class 3B or 4 laser product, except for Class 3B with not more than five times the AEL of Class 2 in the wavelength range of 400 to 700 nm, shall incorporate an emission indicator which provides a visible or audible signal during emission of accessible laser radiation in excess of the accessible emission limits of Class 1, and sufficiently prior to emission of such radiation to allow appropriate action to avoid exposure to the laser radiation.

(ii) For laser systems manufactured on or before August 20, 1986, if the laser and laser energy source are housed separately and can be operated at a separation distance of greater than 2 meters, both laser and laser energy source shall incorporate an emission indicator as required in accordance with paragraph (f)(5)(i) of this section.

(iii) Any visible signal required by paragraph (f)(5)(i) or (f)(5)(ii) of this section shall be clearly visible through protective eyewear designed specifically for the wavelength(s) of the emitted laser radiation.

(iv) Emission indicators required by paragraph (f)(5)(i) or (f)(5)(ii) of this section shall be located so that viewing does not require human exposure to laser or collateral radiation in excess of the accessible emission limits of Class 1 and Table 7 of paragraph (d) of this section.

(6) *Beam attenuator*—(i) Each laser system classified as a Class 3B or 4 laser product, except for Class 3B with not more than five times the AEL of Class 2 in the wavelength range of 400 to 700 nm, shall be provided with one or more permanently attached means, other than laser energy source switch(es), electrical supply main connectors, or the key-actuated master control, capable of preventing access by any part of the human body to all laser and collateral radiation in excess of the accessible emission limits of Class 1 and Table 7 of paragraph (d) of this section.

(ii) Upon written application by the manufacturer or on the initiative of the Director, Office of Compliance, Center for Devices and Radiological Health, the Director may, upon determination that the configuration, design, or function of the laser product would make unnecessary compliance with the requirement in paragraph (f)(6)(i) of this section, approve alternate means to accomplish the radiation protection provided by the beam attenuator.

(7) *Location of controls*. Each Class 2, 3, or 4 laser product shall have operational and adjustment controls located so that human exposure to laser or collateral radiation in excess of the accessible emission limits of Class 1 and Table 7 of paragraph (d) of this section is unnecessary for operation or adjustment of such controls.

(8) *Viewing optics*. All viewing optics, viewports, and display screens incorporated into a laser product, regardless of its class, shall limit the levels of laser and collateral radiation accessible to the human eye by means of such viewing optics, viewports, or display screens during operation or maintenance to less than the accessible emission limits of Class 1 and Table 7 of paragraph (d) of this section. For any shutter or variable attenuator incorporated into such viewing optics, viewports, or display screens, a means shall be provided:

(i) To prevent access by the human eye to laser and collateral radiation in excess of the accessible emission limits of Class 1 and Table 7 of paragraph (d) of this section whenever the shutter is opened or the attenuator varied.

(ii) *To preclude, upon failure of such* means as required in paragraph (f)(8)(i) of this section, opening the shutter or varying the attenuator when access by the human eye is possible to laser or collateral radiation in excess of the accessible emission limits of Class 1 and Table 7 of paragraph (d) of this section.

(9) *Scanning safeguard*. Laser products that emit accessible scanned laser radiation shall not, as a result of any failure causing a change in either scan velocity or amplitude, permit human access to laser radiation in excess of the accessible emission limits of the class of the product.

(10) *Manual reset mechanism*. Each laser system manufactured after August 20, 1986, classified as a Class 4 laser shall be provided with a manual reset to enable resumption of laser radiation emission after interruption of emission caused by the use of a remote interlock or after an interruption of emission in excess of 5 seconds duration due to the unexpected loss of main electrical power.

(g) *Labeling requirements*. In addition to the requirements of §§ 1010.2 and 1010.3 of this chapter, each laser product shall be subject to the applicable labeling requirements of this paragraph. Labeling in accordance with the International Electrotechnical Commission (IEC) Document 825–1 will

satisfy the requirements of paragraphs (g)(1) through (g)(10) of this section.

(1) *Class 2 designation and warnings.* Each Class 2 laser product shall have affixed a label bearing the warning logotype A (Figure 1 in this paragraph) that includes the following wording:

[Position 1 on the logotype]

''LASER RADIATION—DO NOT STARE INTO BEAM''; and

[Position 3 on the logotype]

''CLASS 2 LASER PRODUCT''.

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WARNING LOGOTYPE A

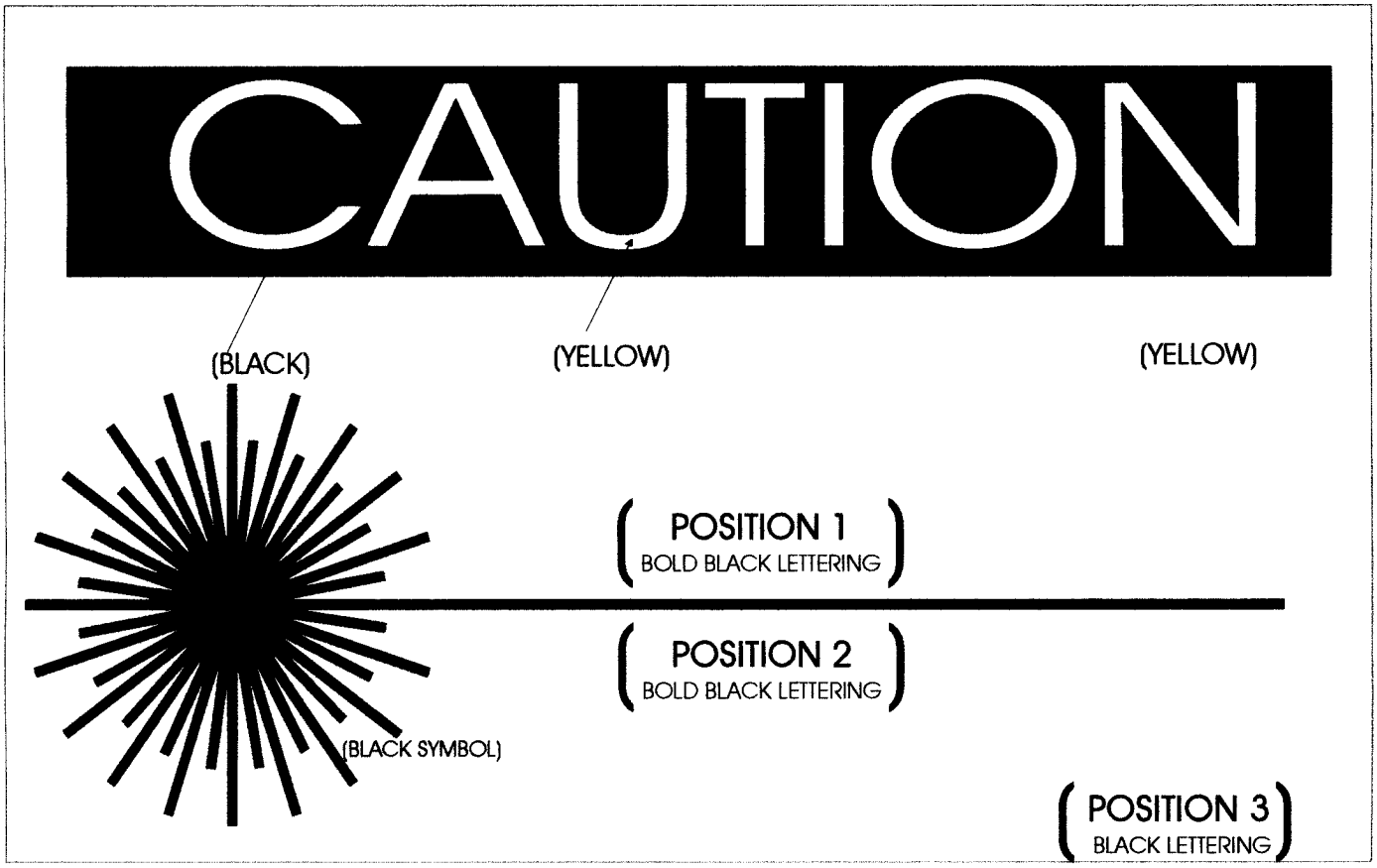

FIGURE 1

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(2) *Class 3A and 3B designations and warnings.* (i) Each Class 3 laser product that does not exceed the accessible emission limits of Table 3A shall have affixed a label bearing the warning logotype A (Figure 1 of paragraph (g)(1) of this section) that includes the following wording:

[Position 1 on the logotype]

''LASER RADIATION DO NOT STARE INTO BEAM OR VIEW DIRECTLY WITH OPTICAL INSTRUMENTS''; and,

[Position 3 on the logotype]

''CLASS 3A LASER PRODUCT''.

(ii) Each Class 3 laser product that exceeds the accessible emission limits of Table 3A in the wavelength range of 400 to 700 nm and less than the AEL of Class 3A at other wavelengths shall have affixed a label bearing the warning logotype B (Figure 2 in this paragraph) and including the following wording:

[Position 1 on the logotype]

''LASER RADIATION AVOID DIRECT EYE EXPOSURE''; and,

[Position 3 on the logotype]

''CLASS 3B LASER PRODUCT''.

BILLING CODE 4610–01–F

WARNING LOGOTYPE B

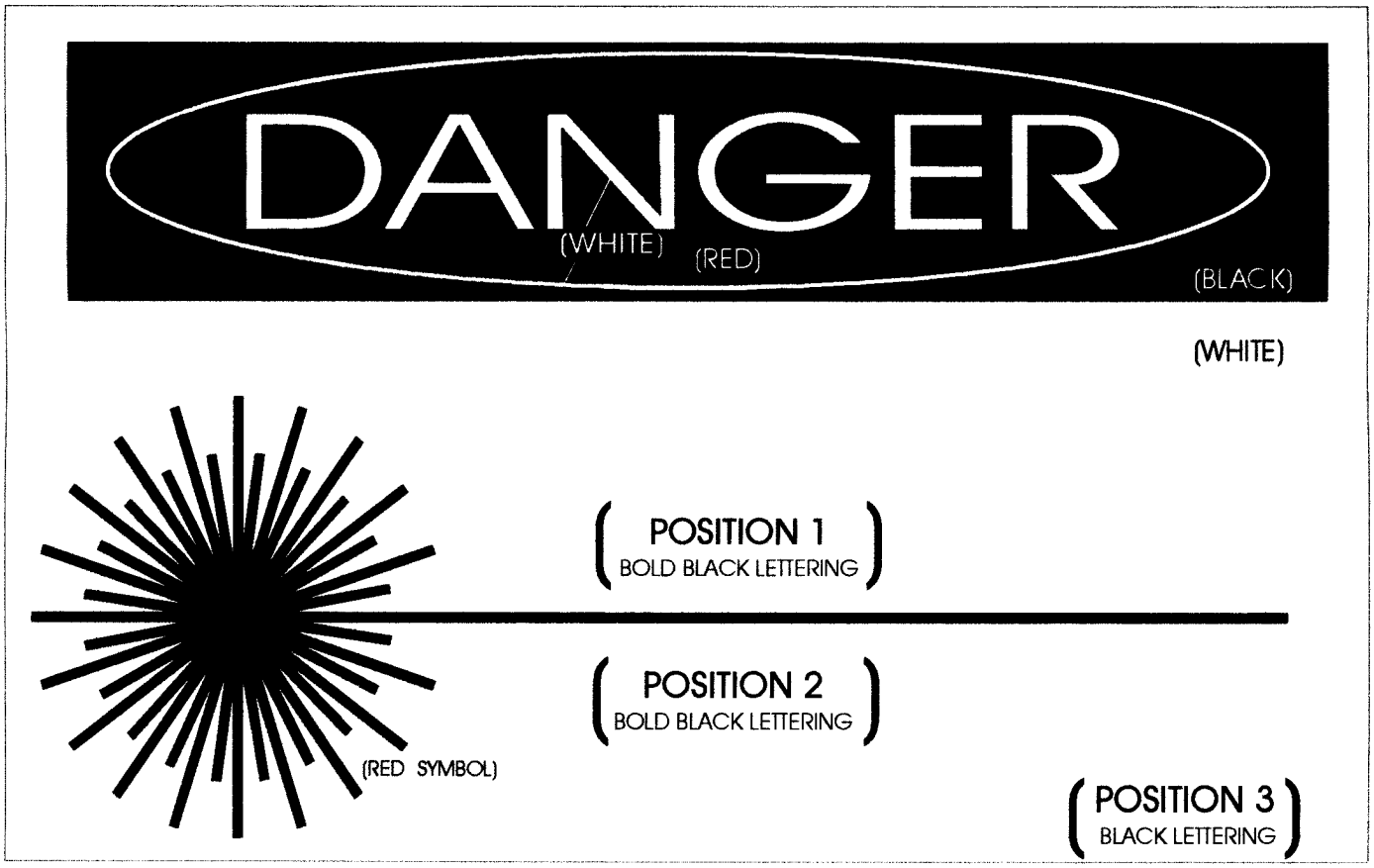

FIGURE 2

BILLING CODE 4160–01–C

(iii) Each Class 3B laser product except as specified in (g)(2)(ii) shall have affixed a label bearing the warning logotype B (Figure 2 of paragraph (g)(2)(ii) of this section) and including the following wording:

[Position 1 on the logotype]

''LASER RADIATION AVOID DIRECT EXPOSURE TO BEAM''; and,

[Position 3 on the logotype]

''CLASS 3B LASER PRODUCT''.

(3) *Class 4 designation and warning.* Each Class 4 laser product shall have affixed a label bearing the warning logotype B (Figure 2 of paragraph (g)(2)(ii) of this section), and including the following wording:

[Position 1 on the logotype]

''LASER RADIATION—AVOID EYE OR SKIN EXPOSURE TO DIRECT OR SCATTERED RADIATION''; and,

[Position 3 on the logotype]

''CLASS 4 LASER PRODUCT''.

(4) *Radiation output information on warning logotype.* Each Class 2, 3, and 4 laser product shall state in appropriate units, at position 2 on the required warning logotype, the maximum output of laser radiation, the pulse duration when appropriate, and the laser medium or emitted wavelength(s).

(5) *Aperture label.* Each laser, except medical lasers, shall have affixed, in close proximity to each aperture through which is emitted accessible laser or collateral radiation in excess of the accessible emission limits of Class 1 and Table 7 of paragraph (d) of this section, a label or labels bearing the following wording as applicable:

(i) ''AVOID EXPOSURE—Laser radiation is emitted from this aperture,'' if the radiation emitted through such aperture is laser radiation.

(ii) ''AVOID EXPOSURE—Hazardous electromagnetic radiation is emitted from this aperture,'' if the radiation emitted through such aperture is collateral radiation described in Table 7, item 1 of paragraph (d) of this section.

(iii) ''AVOID EXPOSURE—Hazardous x-rays are emitted from this aperture,'' if the radiation emitted through such aperture is collateral radiation described in Table 7, item 2 of paragraph (d) of this section.

(6) *Labels for noninterlocked protective housings.* For each laser product, labels shall be provided for each portion of the protective housing which has no safety interlock and which is designed to be displaced or removed during operation, maintenance, or service, and thereby could permit human access to laser or collateral radiation in excess of the limits of Class 1 and Table 7 of paragraph (d) of this section. Such labels shall be visible on the protective housing prior to displacement or removal of such portion of the protective housing and visible on the product in close proximity to the opening created by removal or displacement of such portion of the protective housing, and shall include the wording:

(i) ''CAUTION—Laser radiation when open. DO NOT STARE INTO BEAM.'' for Class 2 accessible laser radiation.

(ii) ''CAUTION—Laser radiation when open. DO NOT STARE INTO BEAM OR VIEW DIRECTLY WITH OPTICAL INSTRUMENTS.'' for Class 3A accessible laser radiation.

(iii) ''DANGER—Laser radiation when open. AVOID DIRECT EYE EXPOSURE.'' for Class 3B accessible

laser radiation with an irradiance greater than 0.0025 W/cm^{-2} and with not more than five times the AEL of Class 2 in the wavelength range of 400 to 700 nm.

(iv) ''DANGER Laser radiation when open. AVOID DIRECT EXPOSURE TO BEAM.'' for Class 3B accessible laser radiation other than that described in paragraph (g)(6)(iii) of this section.

(v) ''DANGER Laser radiation when open. AVOID EYE OR SKIN EXPOSURE TO DIRECT OR SCATTERED RADIATION.'' for Class 4 accessible laser radiation.

(vi) ''CAUTION Hazardous electromagnetic radiation when open.'' for collateral radiation in excess of the accessible emission limits in Table 7, item 1 of paragraph (d) of this section.

(vii) ''CAUTION Hazardous x-rays when open.'' for collateral radiation in excess of the accessible emission limits in Table 7, item 2 of paragraph (d) of this section.

(7) *Labels for defeatably interlocked protective housings.* For each laser product, labels shall be provided for each defeatably interlocked (as described in paragraph (f)(2)(iv) of this section) portion of the protective housing which is designed to be displaced or removed during operation, maintenance, or service, and which upon interlock defeat could permit human access to laser or collateral radiation in excess of the limits of Class 1 or Table 7 of paragraph (d) of this section. Such labels shall be visible on the product prior to and during interlock defeat and shall be in close proximity to the opening created by the removal or displacement of such portion of the protective housing, and shall include the wording:

(i) ''CAUTION—Laser radiation when open and interlock defeated. DO NOT STARE INTO BEAM.'' for Class 2 accessible laser radiation.

(ii) ''CAUTION—Laser radiation when open and interlock defeated. DO NOT STARE INTO BEAM OR VIEW DIRECTLY WITH OPTICAL INSTRUMENTS.'' for Class 3A accessible laser radiation with an irradiance less than or equal to 0.0025 W/cm^{-2}.

(iii) ''DANGER Laser radiation when open and interlock defeated. AVOID DIRECT EYE EXPOSURE.'' for Class 3B accessible laser radiation with an irradiance greater than 0.0025 W/cm^{-2} and with not more than five times the AEL of Class 2 in the wavelength range of 400 to 700 nm.

(iv) ''DANGER Laser radiation when open and interlock defeated. AVOID DIRECT EXPOSURE TO BEAM.'' for Class 3B accessible laser radiation other than that described in paragraph (g)(7)(iii) of this section.

(v) ''DANGER Laser radiation when open and interlock defeated. AVOID EYE OR SKIN EXPOSURE TO DIRECT OR SCATTERED RADIATION.'' for Class 4 accessible laser radiation.

(vi) ''CAUTION Hazardous electromagnetic radiation when open and interlock defeated.'' for collateral radiation in excess of the accessible emission limits in Table 7 item 1 of paragraph (d) of this section.

(vii) ''CAUTION Hazardous x-rays when open and interlock defeated.'' for collateral radiation in excess of the accessible emission limits in Table 7, item 2 of paragraph (d) of this section.

(8) *Warning for visible and/or invisible radiation.* On the labels specified in this paragraph, if the laser or collateral radiation referred to is:

(i) Invisible radiation, the word ''invisible'' shall appropriately precede the word ''radiation''; or

(ii) Visible and invisible radiation, the words ''visible and invisible'' or ''visible and/or invisible'' shall appropriately precede the word ''radiation.''

(iii) Visible laser radiation only, the phrase ''laser light'' may replace the phrase ''laser radiation.''

(9) *Positioning of labels.* All labels affixed to a laser product shall be positioned so as to make unnecessary, during reading, human exposure to laser radiation in excess of the accessible emission limits of Class 1 radiation or the limits of collateral radiation established to Table 7 of paragraph (d) of this section.

(10) *Label specifications.* Labels required by this section and § 1040.11 shall be permanently affixed to, or inscribed on, the laser product, legible, and clearly visible during operation, maintenance, and service, as appropriate. Upon written application by the manufacturer, or on the initiative of the Director, Office of Compliance, Center for Devices and Radiological Health, the Director may, upon determination that the size, configuration, design, or function of the laser product would preclude compliance with the requirements for any required label or would render the required wording of such label inappropriate or ineffective, approve alternate means of providing such label(s) or alternate wording for such label(s) as applicable.

(h) *Informational requirements*—(1) *User information.* Manufacturers of laser products shall provide as an integral part of any user instruction or operation manual which is regularly supplied with the product, or, if not so supplied, shall cause to be provided with each laser:

(i) Adequate instructions for assembly, operation, and maintenance, including clear warnings concerning precautions to avoid possible exposure to laser and collateral radiation in excess of the accessible emission limits in Tables 1, 2, 3, 4, and 7 of paragraph (d) of this section determined under paragraph (e) of this section, and a schedule of maintenance necessary to keep the product in compliance with this section and, if applicable, § 1040.11.

(ii) A statement of the magnitude, in appropriate units, of the pulse duration(s), maximum radiant power and, where applicable, the maximum radiant energy per pulse of the accessible laser detectable in each direction in excess of the accessible emission limits in Table 1 of paragraph (d) of this section.

(iii) Legible reproductions (color optional) of all labels and hazard warnings required by paragraph (g) of this section and, if applicable, § 1040.11, to be affixed to the laser product or provided with the laser product, including the information and warnings required for positions 1, 2, and 3 of the applicable logotype (Figure 1 of paragraph (g)(1) or Figure 2 of paragraph (g)(2)(ii) of this section). The corresponding position of each label affixed to the product shall be indicated or, if provided with the product, a statement that such labels could not be affixed to the product but were supplied with the product and a statement of the form and manner in which they were supplied shall be provided.

(iv) A listing of all controls, adjustments, and procedures for operation and maintenance, including a cautionary warning that the use of controls or adjustments or performance of procedures other than specified may result in hazardous radiation exposure.

(v) In the case of laser products other than laser systems, a statement of the compatibility requirements for a laser energy source that will assure compliance of the laser product with this section and, if applicable, § 1040.11.

(vi) For Class 1 laser products, if the output power (or energy) measured according to paragraph (e)(3)(i)(D) of this section is greater than that measured in accordance with paragraph (e)(3)(i)(A) or (e)(3)(i)(B) of this section and that level exceeds the Class 1 limit, an additional warning is required. This warning shall state that viewing the laser output with optical instruments having a magnifying power greater than

2.5 (e.g., eye loupes) may pose an eye hazard.

(2) *Purchasing and servicing information*. Manufacturers of laser products shall provide or cause to be provided:

(i) In all catalogs, specification sheets, and descriptive brochures pertaining to each laser product, a legible reproduction (color optional) of the class designation and warning required by paragraph (g) of this section to be affixed to that product, including the information required for positions 1, 2, and 3 of the applicable logotype (Figure 1 of paragraph (g)(1) or Figure 2 of paragraph (g)(2)(ii) of this section).

(ii) To servicing dealers and distributors and to others upon request, at a cost not to exceed the cost of preparation and distribution, adequate instructions for service adjustments and service procedures for each laser product model, including clear warnings and precautions to be taken to avoid possible exposure to laser and collateral radiation in excess of the accessible emission limits in Tables 1, 2, 3, 4, and 7 of paragraph (d) of this section, and a schedule of maintenance necessary to keep the product in compliance with this section and, if applicable, § 1040.11. All such service instructions shall include a listing of those controls and procedures that could be used by persons other than the manufacturers or their agents to increase accessible emission levels of radiation and a clear description of the location of displaceable portions of the protective housing that could allow human access to laser or collateral radiation in excess of the accessible emission limits in Tables 1, 2, 3, 4, and 7 of paragraph (d) of this section. The instructions shall include protective procedures for service personnel to avoid exposure to levels of laser and collateral radiation known to be hazardous for each procedure or sequence of procedures to be accomplished, and legible reproductions (color optional) of required labels and hazard warnings.

(i) *Modification of a certified product*. The modification of a laser product, previously certified under § 1010.2 of this chapter, by any person engaged in the business of manufacturing, assembling, or modifying laser products constitutes manufacturing under the Federal Food, Drug, and Cosmetic Act if the modification affects any aspect of the product's performance or intended function(s) for which this section or § 1040.11 have an applicable requirement. The person who performs such modification shall recertify and reidentify the product in accordance with the provisions of §§ 1010.2 and 1010.3 of this chapter.

5. Section 1040.11 is revised to read as follows:

§ 1040.11 Specific purpose laser products.

(a) *Medical laser products*. Each medical laser product shall comply with all of the applicable requirements of § 1040.10 for laser products of its class. In addition:

(1) A label bearing the wording: ''Laser aperture.'' shall be affixed in close proximity to each aperture through which is emitted accessible laser radiation in excess of the accessible emission limits of Class 1, and

(2) For each Class 3B or 4 medical laser system, except those of Class 3B not exceeding 5 milliwatts at visible wavelengths and not intended for ocular exposure:

(i) The accessible emission level, shall not deviate from the preset or selected level by more than ±20 percent,

(ii) An electrical or optical quantity that is directly related to the laser level generated shall be continually monitored during operation,

(iii) A visible or audible indication shall be given whenever the monitored quantity denotes deviation from the preset or selected level by more than ±20 percent,

(iv) The user instructions shall specify an instrument, procedure, and schedule for calibration of the accessible emission level,

(v) If the system emits either continuously or a series of pulses for longer than 0.25 seconds, the system shall incorporate a visual or audible indication of actual emission in addition to the emission indicator required by § 1040.10(f)(5),

(vi) The system shall include a hand or foot operated control to stop the emission of laser radiation. The switch shall be colored red and be located so that it is clearly visible and quickly accessible to the operator from the operating position. If it is a push-button type, it shall be of the ''mushroom-head'' type.

(b) *Surveying, leveling, and alignment laser products*. Each surveying, leveling, or alignment laser product shall comply with all of the applicable requirements of § 1040.10 for a Class 1, 2 or 3A laser product and shall not permit human access to laser radiation in excess of the accessible emission limits of Class 3A.

(c) *Demonstration laser products*. Each demonstration laser product shall comply with all of the applicable requirements of § 1040.10 for a Class 1, 2, 3A or Class 3B laser, except for Class 3B with not more than five times the AEL of Class 2 in the wavelength range of 400 to 700 nanometers, and shall not permit human access to laser radiation in excess of the accessible emission limits of such classes.

Dated: March 17, 1999.

William K. Hubbard,

Acting Deputy Commissioner for Policy.

[FR Doc. 99–7158 Filed 3–23–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 57

RIN 1219–AB11

Diesel Particulate Matter Exposure of Underground Metal and Nonmetal Miners

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Proposed rule; notice of hearings; and close of record.

SUMMARY: MSHA is announcing public hearings on the Agency's proposed rule about diesel particulate matter exposure of underground metal and nonmetal miners, which was published in the **Federal Register** on October 29, 1998. These hearings will be held under section 101 of the Federal Mine Safety and Health Act of 1977.

The rulemaking record will remain open until July 26, 1999.

DATES: If you want to make an oral presentation for the record, submit your request at least 5 days prior to the hearing date. However, you do not have to make a written request to speak. The public hearings will be held at the following locations on the dates indicated:

May 11, 1999, Salt Lake City, Utah
May 13, 1999, Albuquerque, New Mexico
May 25, 1999, St. Louis, Missouri
May 27, 1999, Knoxville, Tennessee

Each hearing will be held from 8:30 a.m. to 5 p.m., but will continue into the evening if necessary.

The rulemaking record will remain open until July 26, 1999.

ADDRESSES: Send requests to make oral presentations to: MSHA, Office of Standards, Regulations, and Variances, Room 631, 4015 Wilson Boulevard, Arlington, VA 22203–1984.

The hearings will be held at the following locations:

1. May 11, 1999, Doubletree Hotel, 255 South West Temple, Salt Lake City, Utah 84101, Tel. No. 801–328–2000.

2. May 13, 1999, Doubletree Hotel, 201 Marquette NW, Albuquerque, New Mexico, 87102, Tel. No. 505–247–3344.

3. May 25, 1999, Holiday Inn Select, St. Louis Downtown Convention Center, 811 North Ninth St., St. Louis, Missouri 63101, Tel. No. 314–421–4000.

4. May 27, 1999, Hyatt Regency Knoxville, 500 Hill Avenue, SE, Knoxville, Tennessee 37915, Tel. No. 423–637–1234.

FOR FURTHER INFORMATION CONTACT: Carol J. Jones, Acting Director; Office of Standards, Regulations, and Variances, MSHA, 4015 Wilson Boulevard, Arlington, VA 22203–1984. She can be reached at cjones@msha.gov (Internet E-mail), 703–235–1910 (Voice), or 703–235–5551 (Fax).

SUPPLEMENTARY INFORMATION:

I. Background

On October 29, 1998, (63 FR 58104), MSHA published a proposed rule that would establish new health standards for underground metal and nonmetal mines that use equipment powered by diesel engines.

The proposed rule is designed to reduce the risks to underground metal and nonmetal miners of serious health hazards that are associated with exposure to high concentrations of diesel particulate matter (dpm). DPM is a very small particle in diesel exhaust. Underground miners are exposed to far higher concentrations of this fine particulate than any other group of workers. The best available evidence indicates that such high exposures put these miners at excess risk of a variety of adverse health effects, including lung cancer.

The proposed rule for underground metal and nonmetal mines would establish a concentration limit for dpm, and require mine operators to use engineering and work practice controls to reduce dpm to that limit. Underground metal and nonmetal mine operators would also be required to implement certain ''best practice'' work controls similar to those already required of underground coal mine operators under MSHA's 1996 diesel equipment rule. Additionally, operators would be required to train miners about the hazards of dpm exposure.

The comment period on the proposed rule was scheduled to close on February 26, 1999. However, in response to requests from the public for additional time to prepare their comments, and with additional data added to the rulemaking record by MSHA, the Agency extended the public comment period until April 30, 1999 (64 FR 7144).

The Agency welcomes your comments on the significance of the material already in the record, and any information that can supplement the record. For example, we welcome comments on: Additional information on existing and projected exposures to dpm and to other fine particulates in various mining environments; the health risks associated with exposure to dpm; on the costs to miners, their families and their employers of the various health problems linked to dpm exposure; or additional benefits to be expected from reducing dpm exposure.

The rulemaking record will remain open until July 26, 1999.

II. Public Hearings

MSHA will hold pubic hearings to receive additional public comments on the proposed rule addressing diesel particulate matter exposure of underground metal and nonmetal miners.

The hearings will be conducted in an informal manner by a panel of MSHA officials. Although formal rules of evidence or cross examination will not apply, the presiding official may exercise discretion to ensure the orderly progress of the hearings and may exclude irrelevant or unduly repetitious material and questions.

Each session will begin with an opening statement from MSHA, followed by an opportunity for members of the public to make oral presentations. The hearing panel may ask questions of speakers. At the discretion of the presiding official, the time allocated to speakers for their presentations may be limited. In the interest of conducting productive hearings, MSHA will schedule speakers in a manner that allows all points of view to be heard as effectively as possible.

Verbatim transcripts of the proceedings will be prepared and made a part of the rulemaking record. MSHA will make available copies of the hearing transcripts for pubic review.

MSHA will accept additional written comments and other appropriate data for the record from any interested party, including those not presenting oral statements. Written comments and data submitted to MSHA will be included in the rulemaking record.

III. Rulemaking Record

To allow for the submission of post-hearing comments, the rulemaking record will remain open until July 26, 1999. This provides nine months from publication for the public to comment on this proposed rule.

Dated: March 8, 1999.

J. Davitt McAteer,

Assistant Secretary for Mine Safety and Health.

[FR Doc. 99–7139 Filed 3–23–99; 8:45 am]

BILLING CODE 4510–43–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–6314–2]

Massachusetts: Final Authorization of State Hazardous Waste Management Program Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; extension of comment period.

SUMMARY: The EPA is providing additional opportunity to the public to comment on the proposal to grant final authorization to the Commonwealth of Massachusetts for revisions to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA) published in the **Federal Register** of February 24, 1999 (64 FR 9110). The notice proposes to approve Massachusetts for final authorization for provisions of the Universal Waste Rule (UWR) and the Toxicity Characteristics (TC) Rule except as they relate to cathode ray tubes (CRTs). The purpose of today's document is to extend the public comment period from March 26, 1999 to May 10, 1999. This extension is provided in response to a request from the Commonwealth of Massachusetts to extend the comment period by an additional 45 days. EPA does not anticipate granting any further extensions of this comment period.

DATES: Written comments must be received on or before May 10, 1999.

ADDRESSES: Copies of the Commonwealth of Massachusetts' revision application and the materials which EPA used in evaluating the revision (the ''Administrative Record'') are available for inspection and copying during normal business hours at the following addresses: Massachusetts Department of Environmental Protection Library, One Winter Street—2nd Floor, Boston, MA 02108, business hours: 9:00 a.m. to 5:00 p.m., Telephone: (617) 292–5802 and EPA Region I Library, One Congress Street—11th Floor, Boston, MA 02114–2023, business hours: 8:30 a.m. to 5:00 p.m., Telephone: (617) 918–1990. Send written comments to Robin Biscaia at the address below.

FOR FURTHER INFORMATION CONTACT: Robin Biscaia, EPA Region I, One Congress Street, Suite 1100 (CHW), Boston, MA 02114–2023; Telephone: (617) 918–1642.

Dated: March 16, 1999.

John P. DeVillars,

Regional Administrator, Region I.

[FR Doc. 99–7087 Filed 3–23–99; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Part 1302

RIN 0970–AB98

Head Start Program

AGENCY: Administration on Children, Youth and Families (ACYF), Administration for Children and Families (ACF), HHS.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Administration on Children, Youth and Families proposes to amend Head Start regulations governing policies and procedures on selection and funding of grantees. The amendment would remove the section on priority for previously selected Head Start agencies. We propose to remove this section because of increased confusion among existing Head Start grantees about the meaning of ''priority'' as ACYF acts to replace grantees who have been terminated or relinquish their grant. This proposed change will clarify that the ''priority'' provided under the Head Start Act (''Act'') applies to annual refunding of existing grantees and not to competition to select a grantee to serve an unserved area or an area previously served by a grantee no longer with the program. Removal of this section will not affect the ongoing funding or operation of Head Start grantees.

DATES: In order to be considered comments on this proposed rule must be received on or before May 24, 1999.

ADDRESSES: Please address comments to the Associate Commissioner, Head Start Bureau, Administration on Children, Youth, and Families, P.O. Box 1182, Washington, DC 20013. Beginning 14 days after close of the comment period, comments will be available for public inspection on Room 2219, 330 C Street, SW, Washington, DC 20201, Monday through Friday, between the hours of 9:00 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: James Kolb, (202) 205–8580.

SUPPLEMENTARY INFORMATION:

I. Program Purpose

Head Start is authorized under the Head Start Act (42 U.S.C. 9801 *et seq.*). It is a national program providing comprehensive developmental services primarily to low-income preschool children, primarily age three to the age of compulsory school attendance, and their families. To help enrolled children achieve their full potential, Head Start programs provide comprehensive health, nutritional, educational, social and other services. Also, section 645A of the Head Start Act provides authority (authorized in 1994) to fund programs for families with infants and toddlers. Programs receiving funds under the authority of this section are referred to as Early Head Start programs.

Additionally, Head Start programs are required to provide for the direct participation of the parents of enrolled children in the development, conduct, and direction of local programs. Parents also receive training and education to foster their understanding of and involvement in the development of their children. In fiscal year 1998, Head Start served 823,000 children through a network of over 2,000 grantees and delegate agencies.

While Head Start is intended to serve primarily children whose families have incomes at or below the poverty line or who receive public assistance, Head Start policy permits up to 10 percent of the children in local programs to be from families who do not meet these low-income criteria. The Act also requires that a minimum of 10 percent of the enrollment opportunities in each program be made available to children with disabilities. Such children are expected to participate in the full range of Head Start services and activities with their non-disabled peers and to receive needed special education and related services.

II. Discussion of the Proposed Removal of 45 CFR 1302.12

The Administration for Children and Families (ACF) is proposing to delete section 1302.12 entitled ''Priority for previously selected Head Start agencies.'' A number of grantees have been terminated or have relinquished their grant in the past several years because they have been unable to meet quality standards applicable to Head Start grantees. This section has caused confusion as ACF has acted to replace these grantees. Removing this section will reduce confusion and misunderstanding among existing Head Start grantees about the proper application of ''priority.''

[**Note:** The references to Section 641 of the Head Start Act in this Preamble reflect, where appropriate, the recent reauthorization changes made to the Head Start Act in the Coats Human Services Reauthorization Act of 1998, Public Law 105–285, enacted October 27, 1998. The Head Start statutory changes in the Reauthorization Act do not affect the proposed removal of 45 CFR 1302.12.]

Since the Head Start, Economic Opportunity, and Community Partnership Act of 1974 (Pub. L. 93–644) was enacted, the Head Start Bureau has used the ''priority'' referred to in the current Section 641(c) of the Act as the basis for the noncompetitive refunding of existing Head Start grantees. This is effected by making grant awards with an indefinite project period. So long as a grantee meets the programmatic and fiscal requirements of the Act and regulations, it continues to receive priority for refunding. Pursuant to the intent of Congress, this provision has assured continuity of services to children and families, without the disruption that a periodic and routine change of sponsoring agency would entail.

We are proposing to eliminate 45 CFR 1302.12 from the regulations governing the selection of grantees. This change is being proposed to make it clear that the application of the priority provided by section 641(c) of the Head Start Act does not apply to competitions to select a grantee to serve an unserved area or an area previously served by a grantee no longer with the program. The statute as now written provides in section 641(a) that in order to be designated as a Head Start grantee an organization must be within the community to be served. Under section 641(d), a competition for award of Head Start funding is only held where no entity in the community is eligible for a priority. ''Community'' is defined in section 641(b) as ''a city, county, or multicity or multicounty unit within a State, an Indian reservation (including Indians in any off reservation area designated by an appropriate tribal government in the consultation with the Secretary), or a neighborhood or other area (irrespective of boundaries or political subdivisions) which provides a suitable organizational base and possesses the commonality of interest needed to operate a Head Start program.'' As the result of the adoption of 45 CFR 1305.3, all grantees must specify in their annual applications for funding the ''service area'' that they plan to serve. They must define it by ''county or sub-county area, such as a municipality, town or census tract or a federally recognized Indian reservation'' and it must not overlap with the service areas where other grantees have been

designated to provide services. A Head Start grantee that is not receiving funding to provide Head Start services in the particular service area would be ineligible for a priority in selection to serve that community under section 641(c) because it is not eligible for selection as a Head Start grantee within the community under section 641(a). Therefore, 45 CFR 1302.12 is no longer needed in the regulation. (The 1998 Head Start reauthorization, however, provides priority to a delegate agency that functioned in the community when the Secretary is designating a Head Start agency but this change would not affect this NPRM.)

Eliminating § 1302.12 will clarify that priority applies to the annual refunding of existing grantees providing services within their communities, not to other circumstances such as selection of a replacement grantee. Section 641(a) provides the relevant guidance in these cases by specifying that ''[t]he Secretary is authorized to designate as a Head Start agency any *local* public or private nonprofit or for-profit agency, *within a community* . . .'' (emphasis added). A Head Start agency's approved service area defines the community it is serving. A geographic area outside the grantee's approved service area (e.g., the service area of a grantee that has left the program) would not be within its community and thus priority would not apply.

We want to emphasize that this proposed rule does not affect in any way the annual refunding of existing grantees to continue to provide Head Start services in their approved service area. Grantees will continue to receive this priority for funding without interruption. Only when a grantee is terminated or relinquishes its grant, and the service area thus has no provider, does this proposed rule have an effect.

III. Impact Analysis

Executive Order 12866

Executive Order 12866 require that regulations be drafted to ensure that they are consistent with the priorities and principles set forth in the Executive Order. The Department has determined that the removal of 45 CFR 1302.12 is consistent with these priorities and principles.

Regulatory Flexibility Act of 1980

The Regulatory Flexibility Act (5.U.S.C. Ch. 6) requires the Federal government to anticipate and reduce the impact of rules and paperwork requirements on small businesses. For each rule with a ''significant economic impact on a substantial number of small entities'' an analysis must be prepared describing the rule's impact on small entities. Small entities are defined by the Act to include small businesses, small non-profit organizations and small governmental entities. Removal of section 1302.12 will not affect any Head Start grantees, including those that are small entities. The change brings the regulations into conformity with requirements of the regulations and the statute.

Paperwork Reduction Act

Under the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13, all Departments are required to submit to the Office of Management and Budget (OMB) for review and approval any reporting or record-keeping requirement inherent in a proposed or final rule. The removal of section 1302.12 is not affected by the PRA requirement.

List of Subjects in 45 CFR Part 1302

Education of disadvantaged, Grant programs—social programs.

(Catalog of Federal Domestic Assistance Program Number 93.600, Project Head Start)

Dated: October 19, 1998.

Olivia A. Golden,

Assistant Secretary for Children and Families.

Approved: December 10, 1998.

Donna E. Shalala,

Secretary.

For the reasons set forth in the Preamble, 45 CFR part 1302 is proposed to be amended to read as follows:

PART 1302—POLICIES AND PROCEDURES FOR SELECTION, INITIAL FUNDING, AND REFUNDING OF HEAD START GRANTEES, AND FOR SELECTION OF REPLACEMENT GRANTEES

1. The authority citation for part 1302 is revised to read as follows:

Authority: 42 U.S.C. 9801 *et seq.*

2. Section 1302.12 is removed.

[FR Doc. 99–7220 Filed 3–23–99; 8:45 am]

BILLING CODE 4184–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 51

[CC Docket No. 99–68; FCC 99–38]

Inter-Carrier Compensation for ISP-Bound Traffic

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: On February 26, 1999, the Commission released a Notice of Proposed Rulemaking (NPRM) in CC Docket No. 99–68 concerning compensation between carriers for the delivery of traffic bound for Internet service providers (ISPs). The NPRM initiates a proceeding to determine, on a prospective basis, a federal inter-carrier compensation mechanism. It tentatively concludes that private negotiations driven by market forces are more likely to lead to efficient outcomes than are rates set by regulation. This document also seeks comment on an alternative proposal under which this Commission would establish rules governing inter-carrier compensation for ISP-bound traffic and resolve disputes through a federal arbitration process.

DATES: Comments are due on or before April 12, 1999 and reply comments are due on or before April 27, 1999.

ADDRESSES: Federal Communications Commission, 445 Twelfth St., S.W., Room TW-A325, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Tamara Preiss, Attorney, Common Carrier Bureau, Competitive Pricing Division, (202) 418–1520.

SUPPLEMENTARY INFORMATION: This summarizes the Commission's Notice of Proposed Rulemaking in CC Docket No. 99–68, Inter-Carrier Compensation for ISP-Bound Traffic, FCC 99–38, adopted February 25, 1999, and released February 26, 1999. The NPRM seeks comment on the tentative conclusion that inter-carrier compensation should be governed prospectively by interconnection agreements negotiated and arbitrated under Sections 251 and 252 of the Act (47 U.S.C. 251, 252). State commissions would arbitrate disputes if parties fail to agree on a compensation mechanism. The file in its entirety is available for inspection and copying during the weekday hours of 9:00 a.m. to 4:30 p.m. in the Commission's Reference Center, room 239, 1919 M St., N.W., Washington D.C., or copies may be purchased from the Commission's duplicating contractor, ITS, Inc.; 1231 20th St., N.W., Washington, D.C. 20036, phone (202) 857–3800.

Analysis of proceeding

A. Discussion

1. The Commission does not have an adequate record upon which to adopt a rule regarding inter-carrier compensation for ISP-bound traffic. It does believe, however, that adopting such a rule to govern prospective compensation would serve the public interest. As a general matter, the Commission tentatively concludes that

our rule should strongly reflect our judgment that commercial negotiations are the ideal means of establishing the terms of interconnection contracts. The Commission seeks comment on two alternative proposals for implementing such a regime. Until adoption of a final rule, state commissions will continue to determine whether reciprocal compensation is due for this traffic. As discussed, the Commission's holding that parties' agreements, as interpreted by state commissions, should be binding also applies to those state commissions that have not yet addressed the issue.

2. For the traffic at issue here, the Commission tentatively conclude that a negotiation process, driven by market forces, is more likely to lead to efficient outcomes than are rates set by regulation. In addition, setting a rate by regulation appears unwise because the actual amounts, need for, and direction of inter-carrier compensation might reasonably vary depending on the underlying commercial relationships with the end user, and who ultimately pays for transmission between its location and the ISP. The Commission acknowledges that, no matter what the payment arrangement, LECs incur a cost when delivering traffic to an ISP that originates on another LEC's network. The Commission believes that efficient rates for inter-carrier compensation for ISP-bound traffic are not likely to be based entirely on minute-of-use pricing structures. In particular, pure minute-of-use pricing structures are not likely to reflect accurately how costs are incurred for delivering ISP-bound traffic. For example, flat-rated pricing based on capacity may be more cost-based. Parties also might reasonably agree to rates that include a separate call set-up charge, coupled with very low per-minute rates. These economic characteristics of this traffic are likely to make voluntary agreements among the parties easier to reach. For these reasons, the Commission proposes that inter-carrier compensation rates for ISP-bound traffic be based on commercial negotiations undertaken as part of the broader interconnection negotiations between incumbent LECs and CLECs. The Commission seeks comment below on two alternative proposals to govern the negotiations with respect to ISP-bound traffic.

3. The Commission tentatively concludes that, as a matter of federal policy, the inter-carrier compensation for this interstate telecommunications traffic should be governed prospectively by interconnection agreements negotiated and arbitrated under Sections 251 and 252 of the Act. Resolution of failures to reach agreement on inter-carrier compensation for interstate ISP-bound traffic then would occur through arbitrations conducted by state commissions, which are appealable to federal district courts. As with other issues on which parties petition state commissions for arbitration under Section 252 of the Act, if a state commission fails to act, the Commission will assume the responsibility of the state commission within 90 days of being notified of such failure. 47 U.S.C. 252(e)(5). This proposal could help facilitate the policy goals set forth by forcing the parties to hold a single set of negotiations regarding rates, terms, and conditions for interconnected traffic and to submit all disputes regarding interconnected traffic to a single arbitrator. The Commission seeks comment on this tentative conclusion.

4. The Commission also seeks comment on an alternative proposal that it adopt a set of federal rules governing inter-carrier compensation for ISP-bound traffic pursuant to which parties would engage in negotiations concerning rates, terms, and conditions applicable to delivery of interstate ISP-bound traffic. These negotiations would commence on the effective date of the adopted rule but could proceed in tandem with broader interconnection negotiations between the parties. The Commission realizes, however, that the success of any negotiation over rates is likely to depend on the availability of the swift and certain resolution of disputes, and the structure of the resolution process. For example, the Commission, through delegation to the Common Carrier Bureau, might resolve such disputes, at the request of either party, through an arbitration-like process, following a discrete period of voluntary negotiation. The Commission seeks comment on how such an approach would operate procedurally and what costing standards the Commission might use in arbitrating disputes. The Commission also seeks comment on how this proposal compares with a broad interconnection negotiation in which most disputes are resolved by a state arbitrator but disputes regarding ISP-bound traffic are resolved through a federal arbitration-like process. The Commission also seeks comment on whether it is possible, as a technical matter, to segregate intrastate and interstate ISP-bound traffic and whether any federal rules it adopts should apply to all intrastate and interstate ISP-bound traffic.

5. The Commission also seeks comment on whether the Commission has the authority to establish an arbitration process that is final and binding and not subject to judicial review. For instance, the Commission notes that parties might agree to binding arbitration pursuant to the Administrative Dispute Resolution Act. Administrative Dispute Resolution Act, Public Law 101–552, 104 Stat. 2738, *codified* at 5 U.S.C. 571 *et seq.* The Commission seeks comment on whether and how such a system should be implemented. In particular, it seeks comment on the desirability of arbitration before an arbitrator selected by the parties, as provided by the Administrative Dispute Resolution Act, as opposed to a federal or state decision-maker. *See* 5 U.S.C. 577.

6. The Commission also invites parties to submit alternative proposals for inter-carrier compensation for interstate ISP-bound traffic that will advance our policy goals in this area. For example, Ameritech has proposed basing inter-carrier compensation for ISP-bound traffic on sharing the incumbent LEC's revenue associated with the interconnected ISP-bound traffic. The Commission also request parties to comment on how any alternatives they propose will advance its goals of ensuring the broadest possible entry of efficient new competitors, eliminating incentives for inefficient entry and irrational pricing schemes, and providing to consumers as rapidly as possible the benefits of competition and emerging technologies.

7. The Commission is aware that disputes may arise regarding various terms and conditions for inter-carrier compensation for ISP-bound traffic. Although many such disputes could be resolved through a negotiation and arbitration process, the Commission seeks comment on whether there are any issues under our two proposals that it can and should address in the first instance through rules rather than through arbitration. The Commission requests parties to comment on the need for rules pertaining to such matters and, to the extent that parties believe that rules are appropriate, the substance and degree of specificity of such rules. The Commission emphasizes, however, that it does not seek comment on whether interstate access charges should be imposed on ESPs as part of this proceeding. The Commission recently reaffirmed that exemption in the *Access Charge Reform Order,* and it does not reconsider it here. *Access Charge Reform Order.*

8. Pursuant to Section 252(i) of the Act, interconnection agreements often have clauses (often referred to as ''most-favored nation'' or ''MFN'' provisions) that allow parties to select, to varying degrees of specificity, provisions from other parties' interconnection

agreements with that particular LEC. 47 U.S.C. 252(i). The Commission understands that an arbitrator recently permitted a CLEC to exercise MFN rights to opt into an interconnection agreement that an incumbent LEC previously had negotiated with another CLEC. That interconnection agreement, executed in July 1996, has a three-year term. The arbitrator concluded that the new CLEC was entitled to opt into the agreement for a new three-year term, thus raising the possibility that the incumbent LEC might be subject to the obligations set forth in that agreement for an indeterminate length of time, without any opportunity for renegotiation, as successive CLECs opt into the agreement. The Commission seeks comment, therefore, on whether and how section 252(i) and MFN rights affect parties' ability to negotiate or renegotiate terms of their interconnection agreements.

9. As discussed, not all ISP-bound traffic is interstate. The Commission seeks comment on whether it should adopt rules for the interstate traffic that would coexist with state rules governing the intrastate traffic, or whether it is too difficult or inefficient to separate intrastate ISP-bound traffic from interstate ISP-bound traffic. The Commission further seeks comment on the technical and practical implications of requiring the separation of intrastate and interstate ISP-bound traffic. In addition, it seeks comment on the implications of various proposals regarding inter-carrier compensation for ISP-bound traffic on the separations regime, such as the appropriate treatment of incumbent LEC revenues and payments associated with the delivery of such traffic. This Commission is mindful of concerns that our jurisdictional analysis may result in allocation to different jurisdictions of the costs and revenues associated with ISP-bound traffic, and the Commission wishes to make clear that it has no intention of permitting such a mismatch to occur. With respect to current arrangements, the Commission notes that this order does not alter the long-standing determination that ESPs (including ISPs) can procure their connections to LEC end offices under intrastate end-user tariffs, and thus for those LECs subject to jurisdictional separations both the costs and the revenues associated with such connections will continue to be accounted for as intrastate.

B. Procedural Matters

1. Ex Parte Presentations

This Notice of Proposed Rulemaking is a permit-but-disclose notice-and-comment rulemaking proceeding. *Ex Parte* presentations are permitted, in accordance with the Commission's rules, provided that they are disclosed as required. *See generally* 47 CFR 1.1200, 1.1202, 1.1204, 1.1206.

2. Initial Regulatory Flexibility Analysis

11. As required by the Regulatory Flexibility Act (RFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in the *Notice of Proposed Rulemaking (Notice). See* 5 U.S.C. 603. Written public comments are requested on the IRFA. These comments must be filed by the deadlines for comment on the remainder of the *Notice,* and should have a separate and distinct heading designating them as responses to the IRFA. The Commission will send a copy of the *Notice,* including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA), in accordance with the RFA, 5 U.S.C. 603(a).

12. *Need for and Objectives of the Proposed Rules.* The Commission tentatively conclude that it should adopt a rule regarding inter-carrier compensation for ISP-bound traffic that strongly reflects our judgment that commercial negotiations are the ideal means of establishing the terms of interconnection contracts. The Commission seeks comment on two alternative proposals for implementing such a regime. Until adoption of a final rule, state commissions will continue to determine whether reciprocal compensation is due for this traffic. In light of comments received in response to the *Notice,* the Commission might issue new rules or alter existing rules.

13. *Legal Basis.* The legal basis for any action that may be taken pursuant to the *Notice* is contained in Sections 1, 2, 4, 201, 202, 274, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154, 201, 202, 251, 252, and 303(r).

14. *Description and Estimate of the Number of Small Entities That May Be Affected by the Notice of Proposed Rulemaking.* The RFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that might be affected by proposed rules. The RFA defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small business concern'' under Section 3 of the Small Business Act. 5 U.S.C. 601(3). A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by SBA. 15 U.S.C. 632. The SBA has defined a small business for Standard Industrial Classification (SIC) category 4813 (Telephone Communications, Except Radiotelephone) to be an entity with no more than 1,500 employees. *See* 13 CFR 121.201. Consistent with prior practice, the Commission excludes small incumbent local exchange carriers (LECs) from the definition of ''small entity'' and ''small business concern.'' Although such a company may have 1,500 or fewer employees and thus fall within the SBA's definition of a small telecommunications entity, such companies are either dominant in their field of operations or are not independently owned and operated. Out of an abundance of caution, however, for regulatory flexibility analysis purposes, the Commission will consider small incumbent LECs within this present analysis and use the term ''small incumbent LECs'' to refer to any incumbent LEC that arguably might be defined by SBA as a small business concern.

15. *Total Number of Telephone Companies Affected.* The United States Bureau of the Census (the Census Bureau) reports that at the end of 1992, there were 3,497 firms engaged in providing telephone services, as defined therein, for at least one year. This number includes a variety of different categories of carriers, including local exchange carriers (both incumbent and competitive), interexchange carriers, competitive access providers, cellular carriers, mobile service carriers, operator service providers, pay telephone operators, PCS providers, covered SMR providers, and resellers. It seems certain that some of those 3,497 telephone service firms may not qualify as small entities because they are not ''independently owned or operated.'' 15 U.S.C. 632(a)(1). For example, a PCS provider that is affiliated with an interexchange carrier having more than 1,500 employees would not meet the definition of a small business. It seems reasonable to conclude, therefore, that fewer than 3,497 telephone service firms are either small entities or small incumbent LECs that may be affected by this Notice.

16. *Local Exchange Carriers.* Neither the Commission nor the SBA has developed a definition of small providers of local exchange services.

The closest applicable definition under the SBA's rules is for telephone communications companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of LECs nationwide of which it is aware appears to be the data that the Commission collects annually in connection with the Telecommunications Relay Service (TRS). According to our most recent data, 1,371 companies reported that they were engaged in the provision of local exchange services. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, or are dominant, the Commission is unable at this time to estimate with greater precision the number of LECs that would qualify as small business concerns under the SBA's definition. Consequently, the Commission estimates that fewer than 1,371 small providers of local exchange service are small entities or small incumbent LECs that may be affected by the Notice.

17. *Description of Projected Reporting, Recordkeeping and Other Compliance Requirements.* As a result of rules that the Commission may adopt, incumbent LECs and CLECs may be required to discern the amount of traffic carried on their networks that is bound for ISPs. In addition, such incumbent LECs and entrants may be required to produce information regarding the costs of carrying ISP-bound traffic on their networks.

18 *Steps Taken to Minimize Significant Economic Impact on Small Entities, and Alternatives Considered.* As noted, the Commission proposes to adopt rules that may require incumbent LECs and CLECs to discern the amount of traffic carried on their networks that is bound for ISPs. The Commission anticipates that if it adopts such rules, incumbent LECs and CLECs, including small entity incumbent LECs and CLECs, will be able to receive compensation for the delivery of ISP-bound traffic that they might not otherwise receive. The Notice also requests comment on alternative proposals.

19. *Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules.* None.

3. Comment Filing Procedures

20. Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before April 12, 1999, and reply comments on or before April 27, 1999. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 Fed. Reg. 24,121 (1998).

21. Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail message to ecfs@fcc.gov and include ''get form <your e-mail address>'' in the body of the message. A sample form and directions will be sent in reply.

22. Parties that choose to file by paper must file an original and four copies of each filing. All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 Twelfth St., S.W., Room TW–A325, Washington, DC 20554.

23. Parties that choose to file by paper should also submit their comments on diskette. These diskettes should be submitted to: Wanda Harris, Federal Communications Commission, Common Carrier Bureau, Competitive Pricing Division, 445 Twelfth St., S.W., Fifth Floor, Washington, DC 20554. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible format using WordPerfect 5.1 for Windows or compatible software. The diskette should be accompanied by a cover letter and should be submitted in ''read only'' mode. The diskette should be clearly labelled with the commenter's name, proceeding (including the docket number in this case, CC Docket No. 99–68); type of pleading (comment or reply comment); date of submission; and the name of the electronic file on the diskette. The label should also include the following phrase ''Disk Copy—Not an Original.'' Each diskette should contain only one party's pleadings, preferably in a single electronic file. In addition, commenters must send diskette copies to the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, N.W., Washington, DC 20036.

V. Ordering Clauses

24. Accordingly, *it is ordered,* pursuant to Sections 1, 4 (i) and (j), 201–209, 251, 252, and 403 of the Communications Act, as amended, 47 U.S.C. 151, 154(i), 154(j), 201–209, 251, 252 and 403, that this Notice of Proposed Rulemaking *is hereby adopted* and comments *are requested.*

25. *It is further ordered* that the Commission's Office of Public Affairs, Reference Operations Division, *shall send* a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–7160 Filed 3–23–99; 8:45 am]

BILLING CODE 6712–01–U

DEPARTMENT OF ENERGY

48 CFR Part 970

RIN 1991–AB36

Acquisition Regulation: Costs Associated With Whistleblower Actions

AGENCY: Department of Energy.

ACTION: Supplemental proposed rule; notice of limited reopening of comment period.

SUMMARY: On January 5, 1998, the Department of Energy (DOE or Department) published a notice of proposed rulemaking (NOPR) to amend the Department of Energy Acquisition Regulations (DEAR) to incorporate a contract reform initiative concerning costs associated with defense of whistleblower actions. DOE has issued this document to invite public comments on alternate regulatory text that DOE is considering. The alternate text would implement a cost principle instead of a contract clause approach, and it would expand the coverage of the proposed DEAR revision to include allowability of labor settlement costs generally.

DATES: Written comments must be submitted no later than April 23, 1999.

ADDRESSES: Comments should be addressed to: Terrence D. Sheppard, Office of Procurement and Assistance Policy (MA–51), Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585–0705.

FOR FURTHER INFORMATION CONTACT: Terrence D. Sheppard (202) 586–8193; fax (202) 586–0545; e-mail terry.sheppard@hq.doe.gov.

SUPPLEMENTARY INFORMATION:

I. Background
II. Public Comment

I. Background

On January 5, 1998 the Department published a NOPR to amend the DEAR to incorporate a contract reform initiative concerning costs associated with defense of whistleblower actions (63 FR 386). On the same day, the Department also published proposed revisions to its whistleblower protection program (10 CFR Part 708). (63 FR 374).

This document invites public comment on an alternate approach to the cost clause that DOE proposed in the January 1998 NOPR. The alternative that DOE is considering would add a new cost principle in DEAR subpart 970.31. The cost principle would address the allowability of costs relating to labor disputes generally, including whistleblower actions. The cost principle would be less prescriptive than the proposed contract clause, and would give contracting officers greater discretion to review the circumstances of each case in making a determination of allowability.

DOE developed this cost principle approach after considering written comments from two entities that were critical of the contract clause proposed in the January 1998 NOPR. One commenter objected to the proposed contract clause provision that would generally disallow the costs of defending a whistleblower action if an adverse determination had been issued against the contractor. See proposed 970.5204–XX(c)(2). The commenter argued that it would be unfair to treat all adverse decisions in the same manner, regardless of the circumstances surrounding the decision. The commenter further pointed out that some cases may represent situations where two reasonable minds could disagree and the reviewer rules in favor of the employee; such close cases would not represent bad faith by the contractor.

In reformulating the whistleblower cost clause as a cost principle, contracting officers would have greater latitude and discretion to review the facts of each case in determining the allowability of defense costs. In some situations, the contracting officer could also determine settlement costs to be unallowable when the facts warrant that determination. Both commenters on the January 1998 NOPR stated that the proposed cost clause, by disallowing costs if there has been an adverse determination against the contractor, would have the practical effect of encouraging contractors to enter into settlements with alleged whistleblowers, regardless of the merit of the claim and whether the contractor's defense of its action was a prudent business decision. In their view, a liberal settlement policy would encourage meritless or questionable claims.

DOE thinks the cost principle that follows this paragraph would provide greater leeway in allowability determinations for situations where a contractor's prudent business judgment determines the need to defend against claims of undetermined merit or claims that may adversely impact industrial relations and employee morale. The cost principle also would bring the Department into greater conformity with the rest of the federal government, particularly as reflected in the decisions of the various Boards of Contract Appeals.

As an alternate to the proposed rule published on January 5, 1998 at 63 FR 386, DOE proposes to add a new section to part 970 to read as follows:

970.3102–XX Labor disputes and whistleblower actions.

(a) Labor settlement costs (awards) can arise from judicial orders, negotiated agreements, arbitration, or an order from a Federal agency or board. The awards generally involve a violation in one of the following areas:

(1) Equal Employment Opportunity (EEO) laws,

(2) Union agreements,

(3) Federal labor laws, and

(4) Whistleblower protection laws.

(b) An award or settlement can cover compensatory damages, or underpayment for work performed. Reimbursement for a complainant employee's legal counsel may also be covered by an award or settlement.

(c) The allowability of these costs should be determined on a case-by-case basis after considering the relevant terms of the contract and the surrounding circumstances; i.e., looking behind the settlement and considering the causes. If the dispute resulted from actions that would be taken by a prudent business person (FAR 31.201–3 and 48 CFR (DEAR) 970.3101–3), the costs would be allowable. However, if the dispute was occasioned by contractor actions which are unreasonable or were found by the agency or board ruling on the dispute to be caused by unlawful, negligent or other malicious conduct, the costs would be unallowable.

(d) The allocability of these costs must also be reviewed (FAR 31.201–4 and 48 CFR (DEAR) 970.3101–3). In some circumstances an award may not impact direct costs, but may be determined to be an allowable indirect cost.

(e) Litigation costs incurred as part of labor settlements shall be differentiated and accounted for so as to be separately identifiable. If a contracting officer provisionally disallows such costs, the contractor may not use funds advanced by DOE to finance litigation costs connected with the defense of a labor dispute or whistleblower action.

(f) Settlement and litigation costs associated with actions resolved prior to an adverse determination or finding against a contractor through judicial action or an agency board will, depending on the circumstances and facts of each case, generally be allowable, if consistent with paragraph (c) of this section. Litigation costs associated with an adverse determination against the contractor require a higher level of scrutiny before a determination of allowability can be made.

II. Public Comment

DOE invites public comment on this cost principle, as well as general comment on the relative merits of the contract clause and cost principle approaches. DOE also invites public comment on the suggested expansion of coverage to include labor settlement costs generally. DOE will finally decide these issues after considering public comments it receives.

Issued in Washington, D.C. on March 17, 1999.

Richard H. Hopf,

Deputy Assistant Secretary for Procurement and Assistance Management.

[FR Doc. 99–7065 Filed 3–23–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA 99–5098]

Federal Motor Vehicle Safety Standards; Side Impact Protection

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of a public meeting.

SUMMARY: This document announces that NHTSA will be holding a public meeting to explore technical issues (including test procedures) relating to the assessment of potential benefits and risks of inflatable restraint systems for side crash protection. This meeting is intended to provide an opportunity for

the automotive community and interested parties to discuss their evaluation of the safety performance of these inflatable restraint systems. The meeting is open to both participants (presenters and discussants) and observers.

DATES: *Public Meeting:* A public meeting will be held on April 19, 1999, from 9:00 a.m. to 4:00 p.m. If you wish to participate in the meeting, contact Randa Radwan Samaha, at the address, telephone, or e-mail listed below, by April 7, 1999. If you wish to present a prepared oral statement during the meeting, please provide a copy of your statement to Ms. Samaha by April 12, 1999.

Written Comments: If you wish to submit written comments to the agency, you must do so in time for the agency to receive your comments by April 30, 1999.

ADDRESSES: *Public Meeting:* The public meeting will be held in Room 2230 of the Nassif Building, 400 Seventh St., S.W., Washington, DC 20590.

Written Comments: If you wish to submit written comments on the issues related to or discussed at this meeting, mention Docket No. NHTSA 99–5098 in your comments, and submit them to: Docket Management, Room PL–401, 400 Seventh Street, S.W., Washington, DC 20590 (Docket hours are from 10:00 a.m. to 5:00 p.m.).

FOR FURTHER INFORMATION CONTACT: *For non-legal issues:* Randa Radwan Samaha, Office of Vehicle Safety Research, NRD–11, 400 Seventh Street, S.W., Washington, DC 20590 (telephone 202–366–4707; fax 202–366–5670, *randa.samaha.@nhtsa.dot.gov*).

For legal issues: Edward Glancy, Office of Chief Counsel, NCC–20, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, DC 20590 (telephone 202–366–2992; fax 202–366–3820).

SUPPLEMENTARY INFORMATION:

A. Background

Several types of inflatable restraint systems (IRS) for side crash protection are rapidly emerging in the U.S. and world markets. The number of vehicles equipped with these systems is projected to increase substantially over the next two to three years. About three-quarters of automakers already offer side-mounted air bags in at least some of their model year 1999 vehicles. The side IRS vary widely in designs, sizes, mounting locations and methods, inflation systems, body regions protected, and areas of coverage. In particular, there are seat and door mounted air bag systems for thorax protection, seat-mounted air bag systems for combination thorax/head protection, and various versions of window curtains, an inflatable tubular structure system, and headrest-mounted air bags for head protection.

Although these systems have been demonstrated to have potential for superior protection in side crashes, there may be a potential of added injury risk by the side IRS to out-of-position children and adults. This potential risk has been examined in exploratory static deployment testing by vehicle manufacturers, NHTSA, Transport Canada, and other institutions; discussed in recent communications between the agency and the automakers; and called attention to in some automakers' news releases and owner's manuals.

In view of the potential risk, it is necessary to understand the performance and overall effectiveness of these recently introduced systems. It is especially necessary to conduct a critical evaluation of any possible harmful effects and unintended consequences of their deployment for children and out-of-position occupants. In December 1998, NHTSA sent a letter to twenty-one vehicle manufacturer executives urging them to personally ensure that their side-mounted air bag systems are designed to ''do no harm'' to occupants. In a February 1999 public statement, the agency said that, ''Manufacturers have an obligation to thoroughly and adequately test the safety of any new technology under real world conditions prior to introduction into the market place.'' In addition, the agency noted in that statement that it ''has held meetings with industry to better understand system designs.''

To date, NHTSA has not received any reports of serious or fatal injuries directly attributable to a side IRS. Both NHTSA and Transport Canada are currently monitoring the field experience of these systems in North America. Further, NHTSA is aware of vehicle manufacturers' efforts to find ways to minimize injury risk to out-of-position occupants either through the design or location of the side IRS, or by means of automatic deactivation under certain circumstances (e.g., when the presence of a child is detected by sensors in the vehicle seat).

Although the side IRS are designed primarily to provide protection to adult occupants, vehicle manufacturers conduct tests with smaller-sized dummies to attempt to determine the injury potential to out-of-position adults and children. Based on recent communications with vehicle manufacturers, the agency is aware of substantial differences among vehicle manufacturers in the test procedures and type of testing performed with child sized and adult dummies, and the levels of the biomechanical injury criteria considered as acceptable performance. (The agency notes that much of the information submitted to it by the manufacturers was provided along with requests that the information be treated as confidential business information under 5 U.S.C. 552. The agency has granted those requests.)

B. Public Meeting

In light of the foregoing, the agency is holding a public meeting to share the real world and test data that are available and explore technical issues relating to the assessment of potential benefits and risks of side IRS.

1. Purpose and Issues

The purpose of this meeting is to:

- Share real world field and test data on the performance of side IRS involving both children and adult occupants.
- Obtain specific technical comments, discussion, and/or constructive input related to the test conditions, anthropomorphic devices, and injury criteria for evaluating the potential benefits and injury risks of side IRS.
- Obtain pertinent technical comments, discussion, and/or constructive input related to new technologies applicable to side IRS design and performance.
- Provide an opportunity for interested persons to present other pertinent data relevant to and appropriate for the assessment of side IRS, e.g., specifications for desirable performance.

Specific issues to be considered and discussed during the meeting include:

- What are the appropriate criteria and their biomechanical bases for assessing injury risk to out-of-position children and adults? Specific body regions to be considered include as a minimum the skull/brain, the neck, the thorax, the upper and lower extremities, and auditory system.
- What and how many appropriate tests should be performed to determine if the side IRS are safe and providing a safety benefit?

2. Procedural Matters.

A written transcript of the meeting will be made.

To make efficient use of the limited time available for the meeting, the issues will be addressed in the following order:

1. Available real world field data.

2. Available test data.
   a. IRS Injury Risk
   b. IRS Effectiveness
3. Child and adult injury criteria for the skull/brain, neck, torso, upper and lower extremities, and auditory system.
4. New technologies applicable to side IRS design and performance (e.g., sensing and suppression).
5. Proposals for test conditions and procedures.

The discussion of each issue will be structured as follows: (1) A short presentation by NHTSA, (2) Presentations by persons and organizations who have indicated the desire to present data or share other information, (3) Presentations of any new or unconsidered data by interested persons, (4) An open discussion by meeting participants of the technical merits of the presentations and of potential test procedures, and (5) A summary statement.

3. Meeting Participation

This is a public meeting and attendance is open to all members of the public. You may attend as a participant (a presenter or a discussant) or an observer.

C. Written Comments

To ensure that the agency is fully cognizant of the issues and positions taken at this meeting, you are encouraged to submit written comments on the issues related to or discussed at this meeting. Two copies should be submitted to DOT's Docket Management Office at the address given at the beginning of this document.

In addition, if your comments are four or more pages in length, we request, but do not require, that you send 10 additional copies, as well as one copy on computer disc, to: Randa Radwan Samaha, Office of Vehicle Safety Research, NRD–11, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, DC 20590. Providing these additional copies would aid the agency in expediting its review of your comments. The copy on computer disc may be in any format, although the agency would prefer that it be in WordPerfect 8.

Your comments must not exceed 15 pages in length (49 CFR 553.21). You may append necessary supplemental material to your comments without regard to the 15-page limit. This limitation is intended to encourage you to detail your primary arguments in a concise fashion. This will aid the agency in understanding your comments.

If you wish to submit certain information under a claim of confidentiality, you should submit three copies of the complete submission, including purportedly confidential business information, to the Chief Counsel, NHTSA, at the street address given above. In addition, you should submit two copies from which the purportedly confidential information has been deleted to Docket Management. Your request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR Part 512.

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

Issued on: March 17, 1999.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

Raymond P. Owings,

Associate Administrator for Research and Development.

[FR Doc. 99–7172 Filed 3–23–99; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Notice of Reopening of Comment Period on Our Re-evaluation of Whether Designation of Critical Habitat Is Prudent for 245 Hawaiian Plants

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of reopening of comment period.

SUMMARY: We, the Fish and Wildlife Service, provide notice of reopening the public comment period on our re-evaluation of whether designation of critical habitat is prudent for 245 Hawaiian plants. Our original notice was published in the **Federal Register** on November 30, 1998 (63 FR 65805) and the original public comment period was opened from November 30, 1998, to March 1, 1999. This notice reopens the comment period to May 24, 1999.

DATES: Comments from all interested parties must be received by May 24, 1999.

ADDRESSES: Comments and materials concerning the notice should be sent to Robert P. Smith, Pacific Islands Manager, U.S. Fish and Wildlife Service, 300 Ala Moana Boulevard, Room 3–122, Box 50088, Honolulu, HI 96850 (telephone: 808/541–2749; facsimile: 808/541–2756).

FOR FURTHER INFORMATION CONTACT: Karen Rosa, Assistant Field Supervisor, Ecological Services (see **ADDRESSES** section) (telephone: 808/541–3441; facsimile: 808/541–3470).

SUPPLEMENTARY INFORMATION:

Background

On January 29, 1997, the Sierra Club Legal Defense Fund (now Earthjustice Legal Defense Fund) filed a lawsuit on behalf of the Conservation Council for Hawaii, the Sierra Club, and the Hawaiian Botanical Society in U.S. District Court in Honolulu, Hawaii, for the Service's failure to designate critical habitat for 278 endangered or threatened Hawaiian plant taxa. Because the statute of limitations had elapsed for many of the plants, this list of plants was later reduced to 245 taxa.

The 245 plant species that are the subject of our November 30, 1998, notice were listed by the Service over a period of several years, between 1990 and 1996, at which time the Service determined that designation of critical habitat was not prudent for one or more of the following three reasons: designation of critical habitat would increase the likelihood of illegal taking or vandalism; designation of critical habitat would not be beneficial for plant species located on private property; and, designation of critical habitat for plant species located on Federal lands provides little or no additional benefit beyond the existing precautions the Federal government must take under section 7 of the Act.

The 245 plant taxa are: *Abutilon eremitopetalum, Abutilon sandwicense, Acaena exigua, Achyranthes mutica, Adenophorus periens, Alectryon macrococcus, Alsinidendron lychnoides, Alsinidendron obovatum, Alsinidendron trinerve, Alsinidendron viscosum, Amaranthus brownii, Argyroxiphium kauense, Argyroxiphium sandwicense* ssp. *macrocephalum, Adenophorus periens, Asplenium fragile* var. *insulare, Bidens micrantha* ssp. *kalealaha, Bidens wiebkei, Bonamia menziesii, Brighamia insignis, Brighamia rockii, Canavalia molokaiensis, Cenchrus agrimonioides, Centaurium sebaeoides, Chamaesyce celastroides* var. *kaenana, Chamasyce deppeana, Chamaesyce halemanui, Chamaesyce herbstii, Chamaesyce kuwaleana, Chamaesyce rockii, Clermontia drepanomorpha, Clermontia lindseyana, Clermontia oblongifolia* ssp. *brevipes, Clermontia oblongifolia* ssp. *mauiensis, Clermontia peleana,*

Clermontia pyrularia, Colubrina oppositifolia, Ctenitis squamigera, Cyanea asarifolia, Cyanea acuminata, Cyanea copelandii ssp. *copelandii, Cyanea dunbarii, Cyanea grimesiana* ssp. *grimesiana, Cyanea grimesiana* ssp. *obatae, Cyanea hamatiflora* ssp. *carlsonii, Cyanea humboldtiana, Cyanea koolauensis, Cyanea lobata, Cyanea longiflora, Cyanea macrostegia* ssp. *gibsonii, Cyanea mannii, Cyanea mceldowneyi, Cyanea pinnatifida, Cyanea platyphylla, Cyanea procera, Cyanea recta, Cyanea remyi, Cyanea st.-johnii, Cyanea shipmanii, Cyanea stictophylla, Cyanea superba, Cyanea truncata, Cyanea undulata, Cyperus trachysanthos, Cyrtandra crenata, Cyrtandra cyaneoides, Cyrtandra dentata, Cyrtandra giffardii, Cyrtandra limahuliensis, Cyrtandra munroi, Cyrtandra polyantha, Cyrtandra subumbellata, Cyrtandra tintinnabula, Cyrtandra viridiflora, Delissea rhytidosperma, Delissea rivularis, Delissea subcordata, Delissea undulata, Diellia erecta, Diellia falcata, Diellia pallida, Diellia unisora, Diplazium molokaiense, Dubautia herbstobatae, Dubautia latifolia, Dubautia pauciflorula, Eragrostis fosbergii, Eugenia koolauensis, Euphorbia haeleeleana, Exocarpos luteolus, Flueggea neowawraea, Gahnia lanaiensis, Gardenia mannii, Geranium arboreum, Geranium multiflorum, Gouania meyenii, Gouania vitifolia, Hedyotis cookiana, Hedyotis coriacea, Hedyotis degeneri, Hedyotis mannii, Hedyotis parvula, Hedyotis st.-johnii, Hesperomannia arborescens, Hesperomannia arbuscula, Hesperomannia lydgatei, Hibiscadelphus giffardianus, Hibiscadelphus hualalaiensis, Hibiscadelphus woodii, Hibiscus arnottianus* ssp. *immaculatus, Hibiscus brackenridgei, Hibiscus clayi, Hibiscus waimeae* ssp. *hannerae, Huperzia mannii, Ischaemum byrone, Isodendrion hosakae, Isodendrion laurifolium, Isodendrion longifolium, Isodendrion pyrifolium, Kokia kauaiensis, Labordia cyrtandrae, Labordia lydgatei, Labordia tinifolia* var. *wahiawaensis, Lepidium arbuscula, Lipochaeta fauriei, Lipochaeta kamolensis, Lipochaeta lobata* var. *leptophylla, Lipochaeta micrantha, Lipochaeta tenuifolia, Lipochaeta waimeaensis, Lobelia gaudichaudii* ssp. *koolauensis, Lobelia monostachya, Lobelia niihauensis, Lobelia oahuensis, Lycopodium nutans, Lysimachia filifolia, Lysimachia lydgatei, Lysimachia maxima, Mariscus fauriei, Mariscus pennatiformis, Marsilea villosa, Melicope adscendens, Melicope balloui, Melicope haupuensis, Melicope knudsenii, Melicope lydgatei, Melicope mucronulata, Melicope ovalis, Melicope pallida, Melicope quadrangularis, Melicope reflexa, Melicope saint-johnii, Melicope zahlbruckneri, Munroidendron racemosum, Myrsine juddii, Myrsine linearifolia, Neraudia angulata, Neraudia ovata, Neraudia sericea, Nothocestrum breviflorum, Nothocestrum peltatum, Nototrichium humile, Ocrosia kilauaensis, Panicum niihauense, Peucedanum sandwicense, Phyllostegia glabra* var. *lanaiensis, Phyllostegia hirsuta, Phyllostegia kaalaensis, Phyllostegia knudsenii, Phyllostegia mannii, Phyllostegia mollis, Phyllostegia parviflora, Phyllostegia racemosa, Phyllostegia velutina, Phyllostegia warshaueri, Phyllostegia waimeae, Phyllostegia wawrana, Plantago hawaiensis, Plantago princeps, Platanthera holochila, Pleomele hawaiiensis, Poa mannii, Poa sandvicensis, Poa siphonoglossa, Portulaca sclerocarpa, Pritchardia affinis, Pritchardia aylmer-robinsonii, Pritchardia kaalae, Pritchardia munroi, Pritchardia napaliensis, Pritchardia remota, Pritchardia schattaueri, Pritchardia viscosa, Pteralyxia kauaiensis, Pteris lidgatei, Remya kauaiensis, Remya mauiensis, Remya montgomeryi, Rollandia crispa, Sanicula mariversa, Sanicula purpurea, Schiedea apokremnos, Schiedea haleakalensis, Schiedea helleri, Schiedea hookeri, Schiedea kaalae, Stenogyne campanulata, Schiedea kauaiensis, Stenogyne kanehoana, Schiedea kealiae, Schiedea lydgatei,Schiedea membranacea, Schiedea nuttallii, Schiedea sarmentosa, Schiedea spergulina* var. *leiopoda,Schiedea spergulina* var. *spergulina, Schiedea stellarioides, Schiedea verticillata, Sesbania tomentosa, Sicyos alba, Silene alexandri, Silene hawaiiensis, Silene lanceolata, Silene perlmanii, Solanum incompletum, Solanum sandwicense, Spermolepis hawaiiensis, Stenogyne bifida, Tetramolopium arenarium, Tetramolopium capillare, Tetramolopium filiforme, Tetramolopium lepidotum* ssp. *lepidotum, Tetramolopium remyi, Tetramolopium rockii, Tetraplasandra gymnocarpa, Trematolobelia singularis, Urera kaalae, Viola chamissoniana* ssp. *chamissoniana, Viola helenae, Viola kauaensis* var. *wahiawaensis, Viola lanaiensis, Viola oahuensis, Wilkesia hobdyi, Xylosma crenatum, Zanthoxylum dipetalum* var. *tomentosum, Zanthoxylum hawaiiense.*

In accordance with the U.S. District Court's August 10, 1998, order (Civil No. 97–00098ACK Conservation Council for Hawaii, *et al.* vs. Bruce Babbitt, *et al.*), the Service is reconsidering the not prudent determinations that were made for these 245 plant species. We published a notice seeking any new information that may affect whether we proceed with a proposal to designate critical habitat for these species (63 FR 65805) on November 30, 1998. The original public comment period closed on March 1, 1999. Four respondents requested that the public comment period be extended to allow all interested parties ample opportunity to respond to our request for comments. Therefore, we are reopening the public comment period and continue to request comments, suggestions, or information on our re-evaluation of whether designation of critical habitat is prudent for these 245 plant species.

We are soliciting information concerning:

(1) Biological, commercial trade, vandalism, or other relevant data concerning any threat to these species;

(2) The location of any additional populations of these species and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of these species;

(4) Current or planned activities in the subject area and their possible impacts on these species;

(5) Additional information on the principal biological or physical constituent elements that are essential to the conservation of these species. These primary constituent elements may include, but are not limited to, the following: seasonal wetland or dryland, water quality or quantity, plant pollinator, geological formation, vegetation type, and specific soil types;

(6) Information on existing management for any of these species and benefits to these species.

This information should be submitted by May 24, 1999, to the Fish and Wildlife office in the **ADDRESSES** section.

Author: The primary author of this document is Christa Russell (see **ADDRESSES** section).

Authority: The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: March 17, 1999.

Thomas J. Dwyer,

Acting Regional Director.

[FR Doc. 99–7153 Filed 3–23–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 990219053–9053–01: I.D. 011999B]

Fisheries off West Coast States and in the Western Pacific; West Coast Salmon Fisheries; Amendment 13; Correction

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

ACTION: Corrections to the proposed rule implementing Amendment 13 to the West Coast Salmon Plan.

SUMMARY: This document contains a correction to the proposed rule that would implement Amendment 13 to the West Coast Salmon Plan, which was published in the **Federal Register** on March 4, 1999.

FOR FURTHER INFORMATION CONTACT: William D. Chappell, NMFS, 301–713–2341.

SUPPLEMENTARY INFORMATION:

Background

NMFS published a proposed rule to implement portions of Amendment 13 to the West Coast Salmon Plan in the **Federal Register** on March 4, 1999 (64 FR 10439). The proposed rule contained an incorrect address for the Pacific Fishery Management Council.

Corrections

In proposed rule FR Doc. 99–5361, beginning on page 10439, in the issue of Thursday, March 4, 1999 (64 FR 10439), make the following correction:

1. On page 10439, under ADDRESSES, in the middle column, the last sentence should be changed to read: ''Copies of the amendment, including the environmental assessment and the regulatory impact review/initial regulatory flexibility analysis, the Amendment 13 Issues Attachment, and the Oregon Department of Fish and Wildlife (ODFW)/NMFS risk assessment for the Oregon Coastal Salmon Restoration Initiative (OCSRI) are available from Lawrence D. Six, Executive Director, Pacific Fishery Management Council, 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201.''

Dated: March 18, 1999.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 99–7168 Filed 3–23–99; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 64, No. 56
Wednesday, March 24, 1999

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 COMMERCE

Foreign-Trade Zones Board

[Order No. 1030]

Expansion of Foreign-Trade Zone 90, Onondage County, New York, Area; Approval of Manufacturing Activity Within FTZ 90; M.S. Pieterafesa, L.P. (Tailored Apparel for Export)

Pursuant to its authority under the Foreign-Trade Zones Act (the Act) of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the County of Onondaga, New York, grantee of FTZ 90, has applied for authority to expand and reorganize its general-purpose zone in Onondaga County, New York, to include two new parcels contiguous to FTZ 90 owned by M.S. Pietrafesa, L.P. (MSPLP), and has requested authority, on behalf of MSPLP, to manufacture tailored apparel under FTZ procedures for export within FTZ 90 (filed 4–23–97, FTZ Doc. 36–97);

Whereas, notice inviting public comment was given in the **Federal Register** (62 FR 26772, 5–15–97);

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the Act and the Board's regulations would be satisfied, and that the proposal would be in the public interest if approval of the application is for export production only;

Now, therefore, the Board hereby authorizes the grantee to expand its zone as requested in the application, and approves the request for export manufacturing authority, subject to the Act and the Board's regulations, including Section 400.28, and further subject to the restrictions listed below.

FTZ manufacturing authority is for export activity only (FTZ procedures shall be limited to duty deferral for foreign-origin, non-quota fabric entered for U.S. consumption).

2. All foreign-origin fabric that is subject to quantitative restrictions must be duty paid/entered for consumption (19 CFR 146.43(a)(2)) prior to admission to FTZ 90.

Signed at Washington, DC, this 12th day of March 1999.

Robert S. LaRussa,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

Dennis Puccinelli,

Acting Executive Secretary

[FR Doc. 99–7219 Filed 3–23–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1027]

Expansion of Foreign-Trade Zone 100, Dayton, OH

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Greater Dayton Foreign-Trade Zone, Inc., grantee of Foreign-Trade Zone 100, submitted an application to the Board for authority to expand FTZ 100 to include four new sites in Dayton, Ohio, within the Dayton Customs port of entry (FTZ Docket 2–97; filed 1/3/97; amended 6/11/98; and, amended 12/14/98 to withdraw the proposed expansion of Site 1 from the request);

Whereas, notice inviting public comment was given in **Federal Register** (62 FR 3659, 1/24/97; 63 FR 33036, 6/17/98) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal, as amended, is in the public interest;

Now, therefore, the Board hereby orders:

The application to expand FTZ 100, as amended, is approved, subject to the Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 12th day of March 1999.

Robert S. LaRussa,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 99–7216 Filed 3–23–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1028]

Expansion of Foreign-Trade Zone 39, Dallas/Fort Worth, Texas

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Dallas/Fort Worth International Airport Board, grantee of Foreign-Trade Zone 39, submitted an application to the Board for authority to expand FTZ 39 to include the Railhead Fort Worth facility (Site 4) in Fort Worth, Texas, within the Dallas/Fort Worth Customs port of entry (FTZ Docket 17–98; filed 4/2/98);

Whereas, notice inviting public comment was given in **Federal Register** (63 FR 17983, 4/13/98) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby orders:

The application to expand FTZ 39 is approved, subject to the Act and the Board's regulations, including Section 400.28, and subject to the Board's standard 2,000-acre activation limit.

Signed at Washington, DC, this 12th day of March, 1999.

Robert S. LaRussa,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 99–7217 Filed 3–23–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1029]

Expansion of Foreign-Trade Zone 137, Loudoun County, VA

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Washington Dulles Foreign Trade Zone, Inc., grantee of Foreign-Trade Zone 137, submitted an application to the Board for authority to expand FTZ 137 to include an additional site in Loudoun County, Virginia, within the Washington DC Customs port of entry (FTZ Docket 40–97; filed 5/8/97; amended 8/20/98);

Whereas, notice inviting public comment was given in **Federal Register** (62 FR 28445, 5/23/97) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal would be in the public interest provided approval is subject to a monitoring condition;

Now, therefore, the Board hereby orders:

The application to expand FTZ 137 is approved, subject to the Act and the Board's regulations, including Section 400.28, and subject to subject to a condition that requires the grantee to submit an annual report to the Board regarding the procedures for identification and development of sites and users.

Signed at Washington, DC, this 12th day of March, 1999.

Robert S. LaRussa,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 99–7218 Filed 3–23–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–817]

Oil Country Tubular Goods From Mexico; Preliminary Results of Changed Circumstances Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of changed circumstances antidumping duty administrative review.

SUMMARY: Since 1997, the Department of Commerce (''the Department'') has received two requests to revoke the antidumping duty (AD) order covering Oil Country Tubular Goods (''OCTG'') from Mexico as it pertains to drill pipe with tool joints attached (commonly referred to as finished drill pipe). One request came from the International Association of Drilling Contractors (''IADC''), requesting that the Department self-initiate a changed circumstances review for the antidumping duty orders covering OCTG from Mexico, Japan, and Argentina. The other request came from Grant Prideco Inc., the leading producer of finished drill pipe in the United States. The latter request, covering only the antidumping duty order on OCTG from Mexico, was withdrawn.

Because of the unusual circumstances surrounding this product, we initiated an antidumping duty changed circumstances administrative review to determine the extent of domestic industry support for continuing the antidumping duty order on OCTG from Mexico with regard to both unfinished and finished drill pipe. We included both finished and unfinished drill pipe in the review because the International Trade Commission determined, in its injury test, that both finished and unfinished drill pipe constituted a ''like product'' with respect to the antidumping duty orders on OCTG from Argentina, Japan, and Mexico. We solicited comments from parties regarding this review, and also requested production figures for 1997 and the first quarter of 1998 for all identified domestic producers of the like product (i.e. finished and unfinished drill pipe). We conducted verifications of the submitted data between September 29 and October 2, 1998.

Based on the information submitted by producers, and our findings at verification, we preliminarily determine that there is insufficient domestic industry support for proceeding to revoke the antidumping duty order on oil country tubular goods with respect to finished drill pipe.

Interested parties are invited to comment on these preliminary results. Parties who submit argument in this proceeding are requested to submit with the argument (1) a statement of the issue and (2) a brief summary of the argument (no longer than five pages, including footnotes).

EFFECTIVE DATE: March 24, 1999.

FOR FURTHER INFORMATION CONTACT: John K. Drury or Richard Weible, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–3208 or (202) 482–1103, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations.

Scope of the Review

The merchandise subject to this changed circumstances review is finished oil well drill pipe with tool joints attached. This merchandise is currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) under item number 8431.43.8010 as ''Parts suitable for use solely or principally with the machinery of headings 8425 to 8430, [o]f machinery of heading 8426, 8429 or 8430: [p]arts for boring or sinking machinery of subheading 8430.41 or 8430.49: [o]ther: [o]f oil and gas field machinery.'' Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this review is dispositive.

Background

On July 8, 1997, the IADC requested that the Department self-initiate a changed circumstances review with respect to finished drill pipe for all countries with finished drill pipe included in the OCTG antidumping duty order. On March 13, 1998, the Department responded to the IADC request. On January 28, 1998, Grant Prideco, Inc. requested revocation of the AD order on Mexican OCTG with respect to finished drill pipe. The Department received letters in opposition to this second request from OMSCO Industries and Drill Pipe Industries, Inc. on February 12, 1998, and February 13, 1998, respectively. On March 16, 1998, Grant Prideco withdrew its request for a changed circumstances review.

Subsequent to the Department's response to IADC on March 13, 1998, parties raised questions regarding whether ''substantially all'' of the domestic industry supports continuation of the AD order on OCTG from Mexico with respect to finished drill pipe. In light of the request originally filed by Grant Prideco and the information available to the Department, the Department believed that Grant Prideco's affirmative statement of no interest constituted good cause for conducting a changed circumstances review solely to determine if ''substantially all'' of the domestic producers of the like product supported partial revocation of the antidumping duty order with respect to finished drill pipe.

Analysis

Section 351.222(g)(i) of the Department's regulations provides that the Secretary may revoke an order in part based on changed circumstances if ''producers accounting for substantially all of the production of the domestic like product to which * * * the part of the order to be revoked * * * have expressed a lack of interest'' in the continued existence of the order, in whole or in part. The Department interprets ''substantially all'' production to mean at least 85 percent of domestic production of the domestic like product. The Department thus conducted the review solely to determine the level of support of domestic producers of the domestic like product for maintaining this order with respect to finished drill pipe.

In order to determine whether ''substantially all'' of the domestic producers supported revocation in part of the order, the Department solicited comments from all parties with an interest in this review. In addition, the Department requested production information from producers of both finished and unfinished drill pipe. The Department received numerous comments regarding interest in the order, including comments on the supply and production lead times of finished drill pipe in the United States. Additionally, the Department received production information from producers of finished drill pipe, as well as producers of unfinished drill pipe.

To verify this information, the Department conducted verifications of three of the domestic producers of the like product (Grant Prideco, OMSCO, and Drill Pipe Inc.) in September and October of 1998. Copies of the public versions of the verification reports for all three companies are available in the Import Administration's Central Records Unit.

Based on the responses by domestic producers, and the results of our verification, we have determined that less than 85 percent of the domestic industry of the like product supports the partial revocation of the order.

Parties wishing to comment on these results must submit briefs to the Department within 30 days after the publication of this notice in the **Federal Register**. Parties will have five days subsequent to this date to submit rebuttal briefs. Any requests for hearing must be filed within 30 days of the publication of this notice in the **Federal Register**.

Preliminary Results of Review

Based on the submissions by the producers, the Department has preliminarily determined that producers supporting a partial revocation of the order account for less than 85 percent of domestic production of the like product. Under the definition given above, ''substantially all'' of the domestic producers of the like product do not support partial revocation of the order with respect to finished drill pipe. As a result, we preliminarily determine that there is no basis to revoke, in part, the antidumping duty order on oil country tubular goods from Mexico with respect to finished drill pipe.

Dated: March 11, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–7215 Filed 3–23–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

AGENCY: International Trade Administration, Commerce

ACTION: Notice of Initiation of Process to Revoke Export Trade Certificate of Review No. 96–00004.

SUMMARY: The Secretary of Commerce issued an export trade certificate of review to The Foreign Market Search for U.S. Products and Services, Inc. doing business as FMS Exports-Imports, Inc., (''FMS''). Because this certificate holder has failed to file an annual report as required by law, the Department is initiating proceedings to revoke the certificate. This notice summarizes the notification letter sent to FMS.

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 (''the Act'') (15 U.S.C. 4011–21) authorizes the Secretary of Commerce to issue export trade certificates of review. The regulations implementing Title III (''the Regulations'') are found at 15 CFR part 325. 0Pursuant to this authority, a certificate of review was issued on September 10, 1996 to FMS.

A certificate holder is required by law (section 308 of the Act, 15 U.S.C. 4018) to submit to the Department of Commerce annual reports that update financial and other information relating to business activities covered by its certificate. The annual report is due within 45 days after the anniversary date of the issuance of the certificate of review (§ § 325.14(a) and (b) of the regulations). Failure to submit a complete annual report may be the basis for revocation. (Sections 325.10(a) and 325.14(c) of the regulations).

The Department of Commerce sent to FMS on August 31, 1998, a letter containing annual report questions with a reminder that its annual report was due on October 25, 1998. Additional reminders were sent on November 13, 1998, and on February 10, 1999. The Department has received no written response to any of these letters.

On March 18, 1999, and in accordance with § 325.10 (c)(1) of the regulations, a letter was sent by certified mail to notify FMS that the Department was formally initiating the process to revoke its certificate. The letter stated that this action is being taken because

of the certificate holder's failure to file an annual report.

In accordance with § 325.10(c)(2) of the regulations, each certificate holder has thirty days from the day after its receipt of the notification letter in which to respond. The certificate holder is deemed to have received this letter as of the date on which this notice is published in the **Federal Register**. For good cause shown, the Department of Commerce can, at its discretion, grant a thirty-day extension for a response.

If the certificate holder decides to respond, it must specifically address the Department's statement in the notification letter that it has failed to file an annual report. It should state in detail why the facts, conduct, or circumstances described in the notification letter are not true, or if they are, why they do not warrant revoking the certificate. If the certificate holder does not respond within the specified period, it will be considered an admission of the statements contained in the notification letter (§ 325.10(c)(2) of the regulations).

If the answer demonstrates that the material facts are in dispute, the Department of Commerce and the Department of Justice shall, upon request, meet informally with the certificate holder. Either Department may require the certificate holder to provide the documents or information that are necessary to support its contentions (§ 325.10(c)(3) of the regulations).

The Department shall publish a notice in the **Federal Register** of the revocation or modification or a decision not to revoke or modify (Section 325.10(c)(4) of the Regulations). If there is a determination to revoke a certificate, any person aggrieved by such final decision may appeal to an appropriate U.S. district court within 30 days from the date on which the Department's final determination is published in the **Federal Register** (§ § 325.10(c)(4) and 325.11 of the regulations).

Dated: March 18, 1999.

Morton Schnabel,

Director, Office of Export Trading Company Affairs.

[FR Doc. 99–7190 Filed 3–23–99; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 031799C]

New England Fishery Management Council; Public Meeting

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

ACTION: Notice of public meetings.

SUMMARY: The New England Fishery Management Council (Council) is scheduling public meetings of its Habitat Committee, including Advisors and Technical Team; Sea Scallop Committee; Social Sciences Advisory Committee; Herring Committee; Ad hoc Vessel Buyback Committee; Groundfish Committee and Advisory Panel in April, 1999 to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from these groups will be brought to the full Council for formal consideration and action, if appropriate.

DATES: The meetings will held between Monday, April 5, 1999 and Thursday, April 22, 1999. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meetings will be held in Peabody, MA; Warwick, RI; Saugus, MA; Providence, RI; and Danvers, MA. See **SUPPLEMENTARY INFORMATION** for specific locations.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council (781) 231–0422. Requests for special accommodations should be addressed to the New England Fishery Management Council, 5 Broadway, Saugus, MA 01906–1036; telephone: (781) 231–0422.

SUPPLEMENTARY INFORMATION:

Meeting Dates and Agendas

Monday, April 5, 1999, 9:30 a.m.—Joint Habitat Committee, Advisory Panel and Technical Team Meeting

Location: Holiday Inn, One Newbury Street (Rt. 1 North), Peabody, MA; telephone: (978) 535–4600.

Review of the 1999 Habitat Annual Review Report; identification and prioritization of habitat-related research and information needs; final review of habitat-related information pertaining to scalloping in areas closed for groundfish conservation; identification of habitat-related issues to be addressed during development of the next groundfish and sea scallop amendments.

Thursday and Friday, April 8–9, 1999, 9:30 a.m. (day 1), 8:30 a.m. (day 2)—Sea Scallop Committee Meeting

Location: Radisson Airport Hotel, 2081 Post Road, Warwick, RI; telephone: (401) 739–3000.

Review of potential impacts of options under consideration for Framework Adjustment 11 to the Atlantic Sea Scallop Fishery Management Plan (FMP) and Framework Adjustment 29 to the Northeast Multispecies FMP, an action that would allow scallop vessels to fish in areas now closed to them for purposes of groundfish conservation —- Area II and the Nantucket Lightship Area; identification of issues to be addressed in Amendment 10 to the Atlantic Sea Scallop FMP, an action that would base scallop management on a series of rotating open and closed areas.

Friday, April 9, 1999, 10:00 a.m.—Social Sciences Advisory Committee

Location: New England Fishery Management Council Office, 5 Broadway, Saugus, MA; telephone: (781) 231–0422.

Evaluation of the socio-economic data and analyses contained in the Monkfish and the Northeast Multispecies FMPs for the purpose of recommending improvements.

Tuesday, April 13, 1999, 10:00 a.m.—Herring Oversight Committee Meeting

Location: Providence Biltmore Hotel, Kennedy Plaza, 11 Dorrance Street, Providence, RI 02903; telephone: (401) 421–0700.

Review of proposals and related issues under consideration for a framework adjustment to the Atlantic Herring FMP; these may include, but are not limited to, possible changes to spawning closure boundaries in the Gulf of Maine; total allowable catch set-asides in Management Area 1 for various industry sectors; groundfish bycatch by mid-water trawlers; discussion of the establishment of a control date and a limited entry system for the herring fishery.

Tuesday, April 20, 1999, 9:30 a.m.—Ad Hoc Vessel Buyback Committee

Location: New England Fishery Management Council Office, 5 Broadway, Saugus, MA; telephone: (781) 231–0422.

Discussion of the Council's role in industry-generated vessel buyout proposals; development of recommendations concerning the specifics of Council involvement, the content of industry proposals and protocols for the selection of alternative proposals.

Wednesday, April 21, 1999, 9:30 a.m.—Groundfish Advisory Panel Meeting

Location: King's Grant Inn, Trask Lane and Route 128 (Exit 21N) Danvers, MA 01923; telephone: (978) 774–6800.

Development of advice on issues and management measures proposed for public hearings on Amendment 13 to the Northeast Multispecies FMP (the amendment will contain rebuilding programs for overfished groundfish stocks pursuant to the Sustainable Fisheries Act and other measures identified during the scoping process, including the management of excess fishing capacity (latent permits) and minimizing the complexity of the FMP).

Thursday, April 22, 1999, 8:30 a.m.—Groundfish Committee Meeting

Location: King's Grant Inn, Trask Lane and Route 128 (Exit 21N) Danvers, MA 01923; telephone: (978) 774–6800.

Development of recommendations to the Council on issues and management measures proposed for public hearings on Amendment 13 to the Northeast Multispecies FMP (the amendment will contain rebuilding programs for overfished groundfish stocks pursuant to the Sustainable Fisheries Act and other measures identified during the scoping process, including managing excess fishing capacity (latent permits) and minimizing the complexity of the FMP.

Although other issues not contained in this agenda may come before this Council for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal Council action during this meeting. Action will be restricted to those issues specifically listed in this notice.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting dates.

Dated: March 18, 1999.

Richard W. Surdi,

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

[FR Doc. 99–7169 Filed 3–23–99; 8:45 am]

BILLING CODE 3510–22–F

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Increase in Allowable Cost Per Full-time Equivalent (FTE) for Indian Tribes Applying for 1999 AmeriCorps and America Reads Funds

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (Corporation) announces an increase in the allowable cost per FTE for Indian Tribes applying for 1999 AmeriCorps*State and America Reads funds. The Corporation will consider applications with a cost per FTE of up to $14,500, provided that the necessity for the increase is clearly documented in the proposal.

FOR FURTHER INFORMATION CONTACT: Cynthia Johnson, (202) 606–5000, ext. 541. TDD (202) 565–2799. For individuals with disabilities, information will be made available in alternative formats upon request.

SUPPLEMENTARY INFORMATION: Pursuant to the National and Community Service Act of 1990, as amended (42 U.S.C. 12501 *et seq.*), the Corporation for National and Community Service (Corporation) makes grants to support national service programs. The Corporation has sent out application packets announcing the availability of $6,500,000 for its 1999 AmeriCorps*State and America Reads competition for Indian Tribes. According to the application instructions, no grant may exceed the total number of FTE AmeriCorps members multiplied by $11,250. This notice is to inform applicants that the Corporation will consider applications with a cost per FTE of up to $14,500, provided that the necessity for the increase is clearly documented in the proposal.

For example, if an applicant wishes to apply for a program supporting 20 full-time AmeriCorps members, the maximum grant award the applicant may receive is 20 × $14,500, or $290,000. If the applicant applies for 15 full-time members and 10 part-time members, the maximum grant award would also be 20 × $14,500, or $290,000.

Applicants should keep in mind that proposals requesting a lower cost per member might be deemed more competitive, as this is a factor in our evaluation criteria. Further, whether the Corporation may approve a budget of $14,500 per member will depend upon whether the average cost per FTE requested for all program applicants, including those submitted pursuant to this notice, meets the $11,250 cost per FTE target.

Dated: March 18, 1999.

Thomas L. Bryant,

Acting General Counsel.

[FR Doc. 99–7151 Filed 3–23–99; 8:45 am]

BILLING CODE 6050–28–U

DEPARTMENT OF DEFENSE

[OMB Control Number 0704–0259]

Information Collection Requirement; Defense Federal Acquisition Regulation Supplement; Economic Price Adjustment Clauses

AGENCY: Department of Defense (DoD).

ACTION: Notice and request for comments regarding a proposed extension of an approved information collection requirement.

SUMMARY: In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), DoD announces the proposed extension of a public information collection requirement and seeks public comment on the provisions thereof. 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 estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology. This information collection requirement is currently approved by the Office of Management and Budget (OMB) for use through August 31, 1999. DoD proposes that OMB extend its approval for use through August 31, 2002.

DATES: Consideration will be given to all comments received by May 24, 1999.

ADDRESSES: Written comments and recommendations on the proposed information collection requirement should be sent to: Defense Acquisition Regulations Council, Attn: Ms. Melissa D. Rider, PDUSD (A&T) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telefax (703) 602–0359.

E-mail comments submitted over the Internet should be addressed to: dfars@acq.osd.mil.

Please cite OMB Control Number 0704–0259 in all correspondence related to this issue. E-mail comments should cite OMB Control Number 0704–0259 in the subject line.

FOR FURTHER INFORMATION CONTACT: Ms. Melissa D. Rider, at (703) 602–0131. A copy of this information collection requirement is available electronically via the Internet at:

http://www.acq.osd.mil/dp/dar/dfars.html

Paper copies may be obtained from Ms. Melissa D. Rider, PDUSD (A&T) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062.

SUPPLEMENTARY INFORMATION:

Title, Associated Form, and OMB Number: Defense Federal Acquisition Regulation Supplement (DFARS) Part 216, Types of Contracts, and related clauses at DFARS 252.216–7000, Economic Price Adjustment—Basic Steel, Aluminum, Brass, Bronze, or Copper Mill Products, DFARS 252.216–7001, Economic Price Adjustment—Nonstandard Steel Items, and DFARS 252.216–7003, Economic Price Adjustment—Wage Rate or Material Prices Controlled by a Foreign Government; OMB Control Number 0704–259.

Needs and Uses: The clauses at DFARS 252.216–7000, 252.216–7001, and 252.216–7003 require contractors with fixed-price economic price adjustment contracts to submit information to the contracting officer regarding changes in established material prices or wage rates. The contracting officer uses this information to make appropriate adjustments to contract prices.

Affected Public: Businesses or other for-profit and not-for-profit institutions.

Annual Burden Hours: 1,212.

Number of Responses: 302.

Responses Per Respondent: 2.

Average Burden Per Response: 4 hours.

Frequency: On occasion.

Summary of Information Collection

Each clause requires the contractor to submit certain information that the contracting officer uses to adjust contract prices:

a. Paragraph (c) of the clause at DFARS 252.216–7000 requires the contractor to notify the contracting officer of the amount and effective date of each decrease in any established price. Paragraph (d) of the clause permits the contractor to submit a written request to the contracting officer for an increase in contract price.

b. Paragraph (f)(2) of the clause at DFARS 252.216–7001 requires the contractor to furnish a statement identifying the correctness of the established prices and employee hourly earnings that are relevant to the computation of various indices. Paragraph (f)(3) of the clause requires the contractor to make available all records used in the computation of labor indices upon the request of the contracting officer.

c. Paragraph (b)(1) of the clause at DFARS 252.216–7003 permits the contractor to provide a written request for contract adjustment based on increases in wage rates or material prices that are controlled by a foreign government. Paragraph (c) of the clause requires the contractor to make available its books and records that support a requested change in contract price.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

[FR Doc. 99–7134 Filed 3–23–99; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Department of the Navy

Record of Decision for the Disposal and Reuse of Naval Training Center, San Diego, California

SUMMARY: The Department of the Navy (Navy), pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. § 4332(2)(C), and the regulations of the Council on Environmental Quality that implement NEPA procedures, 40 C.F.R. Parts 1500–1508, hereby announces its decision to dispose of Naval Training Center (NTC) San Diego in San Diego, California.

Navy and the City of San Diego jointly analyzed the impacts of the disposal and reuse of Naval Training Center San Diego in an Environmental Impact Statement/Environmental Impact Report (EIS/EIR) prescribed by NEPA and the California Environmental Quality Act (CEQA), Cal. Pub. Res. Code, §§ 21000–21177. The EIS/EIR analyzed five reuse alternatives and identified the Naval Training Center San Diego Draft Reuse Plan dated June 1997 (Reuse Plan) as the Preferred Alternative. The City of San Diego is the Local Redevelopment Authority (LRA) for Naval Training Center San Diego. Department of Defense Rule on Revitalizing Base Closure Communities and Community Assistance (DoD Rule), 32 C.F.R. § 176.20(a).

The Preferred Alternative proposed a mix of residential, educational, commercial, public and recreational uses. These include housing, two hotels, an environmental monitoring laboratory and related administrative facility for the San Diego Metropolitan Wastewater Department, a public safety institute, a nesting site for the California least tern, and expansion of the adjacent San Diego International Airport (Lindbergh Field).

Navy intends to dispose of NTC San Diego in a manner that is consistent with the Reuse Plan. Navy has determined that a mixed land use will meet the goals of achieving local economic redevelopment, creating new jobs, and providing additional housing, while limiting adverse environmental impacts and ensuring land uses that are compatible with adjacent property. This Record Of Decision does not mandate a specific mix of land uses. Rather, it leaves selection of the particular means to achieve the proposed redevelopment to the acquiring entities and the local zoning authority.

Background

Under the authority of the Defense Base Closure and Realignment Act of 1990 (DBCRA), Public Law 101–510, 10 U.S.C. § 2687 note, the 1993 Defense Base Closure and Realignment Commission recommended the closure of Naval Training Center San Diego. This recommendation was approved by President Clinton and accepted by the One Hundred Third Congress in 1993. Naval Training Center San Diego closed on April 30, 1997, and Navy is currently maintaining the property in a caretaker status.

The Naval Training Center is located in San Diego County, California, within the corporate limits of the City of San Diego. The base is bounded on the north and west by Rosecrans Street and the San Diego communities of Loma Portal and Point Loma; on the south by San Diego Bay and Harbor Drive; and on the east by Lindbergh Field. Harbor Drive, a City road on Navy property, is located on the southern side of NTC San Diego and lies adjacent to San Diego Bay.

The 541-acre property consists of two areas that are separated by a 51-acre manmade waterway known as the Boat Channel. The main part of the base covers 377 acres and is situated west of the Boat Channel. The other part of the base, known as Camp Nimitz, covers 113 acres and is located east of the Boat Channel.

Navy will retain part of the NTC San Diego complex, *i.e.*, 30 acres containing the training and conference center known as the Admiral Kidd Club (Building A3); the United States Pacific Fleet Intelligence Training Center (Building 564); 7 acres containing the Consolidated Area Telephone Service facilities (Building 600); and 1 acre

containing the cogeneration power plant (Building 566). Navy made the remaining property available for possible use by other Federal agencies.

Navy approved requests from the Department of Justice and the United States Marine Corps for transfers of base closure property at the Naval Training Center. Navy transferred a two-acre parcel on Camp Nimitz containing the small arms range (Building 569) to the Department of Justice on July 27, 1998. Navy transferred a 72-acre parcel west of the Boat Channel to the Marine Corps for use as military family housing on August 10, 1998. The remaining 429 acres are surplus to the needs of the Federal Government.

This Record Of Decision addresses the disposal and reuse of these 429 acres, which contain about 270 buildings and structures that were used for training, related administrative activities, and housing. The base also contains recreational facilities and an undeveloped area that has been set aside as a nesting site for the California least tern, a Federally protected endangered species.

Some of the buildings and structures on the main part of the base at NTC San Diego were built during the 1920s and 1930s, and they constitute the Naval Training Center San Diego Historic District. The Historic District includes Buildings 1 through 12, 14 through 30, 32, 35, 175, 176, 177, 178, 193, 194, 195, 198, 200, 201, 202, 208, 210, and Quarters A, B, C, and D. The Historic District also includes other structures, *i.e.*, the USS Recruit (Building 430), two gun platforms (Buildings 453 and 454), two flagpoles (Buildings 451 and 528), and the Gate 1 Arch and Gatehouse (Main Gate). Finally, the Historic District includes open areas, roads, gardens and a burial site. These include Lawrence Court, Luce Court, John Paul Jones Court, Ingram Plaza, Sellers Plaza, Preble Field, Decatur Road, Dewey Road, Perry Road, Roosevelt Road, Sims Road, Truxtun Road, Stanley/Welty Terrace, the gardens in front of the officers quarters, six Bunya-bunya trees, a fir tree, and the Navy burial site on the Sail Ho golf course.

The historic buildings, which were the original structures at NTC San Diego, are important examples of the Spanish Colonial Revival style of architecture that is evident throughout Southern California. They reflect Navy's decision during the 1920's to build bases that adopt important regional architectural themes.

Navy published a Notice Of Intent in the **Federal Register** on May 13, 1996, announcing that Navy and the City of San Diego would prepare an EIS/EIR for the disposal and reuse of Naval Training Center San Diego. Navy and the City held a public scoping meeting at the Naval Training Center San Diego Support Center on June 11, 1996, and the scoping process concluded on June 19, 1996.

Navy and the City distributed a Draft EIS/EIR (DEIS/EIR) to Federal, State, and local governmental agencies, elected officials, community groups and associations, and interested persons on August 29, 1997, and commenced a 45-day public review and comment period. During this public review period, Federal, State, and local agencies, community groups and associations, and interested persons submitted oral and written comments concerning the DEIS/EIR. On September 30, 1997, Navy and the City held a public hearing at the Naval Training Center San Diego Support Center to receive comments on the DEIS/EIR.

Navy's and the City's responses to the public comments were incorporated in the Final EIS/EIR (FEIS/EIR), which was distributed to the public on July 31, 1998, for a review period that concluded on August 31, 1998. Navy and the City received eight letters commenting on the FEIS/EIR.

Alternatives

NERA requires Navy to evaluate a reasonable range of alternatives for the disposal and reuse of this surplus Federal property. In the FEIS/EIR, Navy and the City of San Diego analyzed the environmental impacts of five reuse alternatives. Navy also evaluated a ''No Action'' alternative that would leave the property in a caretaker status with Navy maintaining the physical condition of the property, providing a security force, and making repairs essential to safety.

The City of San Diego, acting as the LRA, established the Naval Training Center San Diego Reuse Planning Committee in November 1993. The Reuse Planning Committee held public design workshops in November 1994 and March 1995, at which it solicited comments concerning reuse of the Naval Training Center. The Committee also held public meetings in December 1995, February 1996, and May 1996, where it provided status reports and solicited additional comments concerning reuse of the base.

In May 1996, the Reuse Planning Committee submitted a conceptual land use plan entitled Policies and Priorities for Base Reuse, dated May 22, 1996, to the San Diego City Council. On July 16, 1996, the City Council modified this plan by increasing the area designated for airport expansion and proposing to build up to 350 homes in the residential area. City Council Resolution No. R–287661. Based upon this modified conceptual land use plan, the City Council developed the Draft Reuse Plan, dated September 30, 1996.

On October 21, 1996, the City Council modified its July 1996 decision by changing the mix of proposed uses for Camp Nimitz to make additional property available for expansion of the airport. In particular, the City Council removed a proposed emergency vehicle operations course from the Draft Reuse Plan dated September 30, 1996. City Council Resolution No. R–287949. These changes were embodied in another Draft Reuse Plan, dated June 1997, that Navy analyzed in the NEPA process. On October 20, 1998, the City Council approved the Draft Reuse Plan dated June 1997 as the final Naval Training Center San Diego Reuse Plan and issued this Reuse Plan in October 1998. City Council Resolution No. R–290901.

The Reuse Plan, identified in the FEIS/EIR as the Preferred Alternative, proposed a mix of land uses. For the main part of the base, west of the Boat Channel, the Reuse Plan designated areas for residential, educational, commercial, and recreational uses. In the southwest corner of the main base, the Reuse Plan proposed to remove all existing structures and build 350 new houses and townhouses on 39 acres. On 29 acres located northeast of this residential area, the Reuse Plan would use existing buildings for educational purposes and build new educational facilities. It would be necessary to remove about half of the existing buildings here to permit the new construction. This complex would provide more than 640,000 square feet of space for use as classrooms, vocational training shops, and related administrative facilities.

A 42-acre golf course would be developed along the northwestern and northern boundaries of the Naval Training Center property. About 58 acres southeast of the golf course would be used for offices, restaurants, retail businesses, and museums. This 58-acre area comprises nearly the entire Historic District, where all of the existing buildings and structures would be retained. The Preferred Alternative also proposed a 76-acre recreational area along the west side of the Boat Channel and construction of a 350-room, three-story hotel on an 18-acre site near Harbor Drive.

On the Camp Nimitz property, east of the Boat Channel, the preferred Alternative proposed to build a 650-room, eight-story hotel on 14 acres facing Harbor Drive. On an 8-acre parcel

north of this hotel, the Preferred Alternative would build an environmental monitoring laboratory and related administrative facility providing 100,000 square feet of space for use by the San Diego Metropolitan Wastewater Department. On 25 acres located east of the hotel and north of the laboratory, the Preferred Alternative would use some existing buildings and build new facilities for training local fire, police, and other public safety personnel. It would be necessary to remove some of the existing buildings here to permit the new construction associated with this public safety institute.

Under the Preferred Alternative, 26 acres of undeveloped property located east of the public safety institute and adjacent to Terminal 2 at Lindbergh Field would be used to expand San Diego International Airport. An additional 25 acres in this area would be used as a nesting site and buffer zone for the California least tern. A narrow strip of land that lies along the eastern shore of the Boat Channel would be used as a recreational area. Finally, the Preferred Alternative would retain Harbor Drive and the Boat Channel.

Navy analyzed a second alternative described in the FEIS/EIR as the Entertainment Alternative. On the main part of the base, west of the Boat Channel, the Entertainment Alternative would build 450 apartments and duplexes on the same 39-acre parcel in the southwest corner of the property where 350 houses and townhouses would be built under the Preferred Alternative. The Entertainment Alternative would create a 113-acre Naval theme park located northeast of the residential area. This part could provide restaurants, theaters, retail shops, and video entertainment and would include the Historic District. A 1,000-room, eight-story hotel would be built on 17 acres east of the residential area. Additionally, a 46-acre recreational area would occupy the western shore of the Boat Channel, and a 42-acre golf course would be located along the northern and eastern boundaries of the base.

East of the Boat Channel, the Entertainment Alternative proposed to make a 76-acre area at the Camp Nimitz property available for the expansion of Lindbergh Field. Finally, this Alternative proposed to maintain the 25-acre California least tern nesting site, Harbor Drive, and the Boat Channel.

Navy analyzed a third alternative described in the FEIS/EIR as the Low Traffic Alternative. This Alternative proposed a combination of uses that would result in traffic levels similar to those generated before closure of the Navy Training Center.

On the west side of the Boat Channel, the Low Traffic Alternative proposed a residential area that would provide 200 new residential units on a 22-acre parcel in the southwestern part of the Naval Training Center property. These residential units could include houses, townhouses, duplexes, and apartments. Southeast of this residential area, there would be an elementary school on about 9 acres. Northeast of the residential area, 38 acres would be used for educational buildings. Most of the existing facilities here would be demolished to permit the new construction.

The environmental monitoring laboratory would be located on 5 acres southeast of the educational area. A 72-acre golf course would be developed along the northwestern, northern, and eastern boundaries of the Naval Training Center property. A 77-acre recreational area would be located between the western shore of the Boat Channel and Rosecrans Street. Like the Preferred Alternative, the Low Traffic Alternative would introduce offices into the Historic District.

On Camp Nimitz, the Low Traffic Alternative proposed to build a 350-room, three-story hotel on 10 acres facing Harbor Drive and maintain the 25-acre California least tern nesting site. A 68-acre between the hotel and the least tern nesting site would be made available for the expansion of Lindbergh Field. Finally, this Alternative would retain Harbor Drive and the Boat Channel.

Navy analyzed a fourth alternative designated as the High Traffic Alternative. This Alternative would increase traffic above the levels experienced at the Naval Training Center before closure, because more of the property would be dedicated to commercial enterprises, *i.e.*, offices, retail stores, and research and development activities. This Alternative would not provide areas for residential uses or for expansion of the airport.

On the west side of the Boat Channel, seven areas covering 105 acres and providing more than one million square feet of space dedicated to commercial uses would be spread throughout the main part of the base. This Alternative would provide 35 acres along the northwest boundary of the base adjacent to Rosecrans Street for educational activities and about 18 acres at the northern end of the Naval Training Center property for a golf course. Light industrial facilities containing up to 230,000 square feet would be located in the center of the main part of the base.

On Camp Nimitz, the High Traffic Alternative would build a 751-room, eight-story hotel on 28 acres facing Harbor Drive. A 5-acre wetland would be established on land located between the hotel an the eastern shore of the Boat Channel. This Alternative would also provide a public safety institute on 38 acres between the Boat Channel and Lindbergh Field. Like the Preferred Alternative, the High Traffic Alternative proposed to retain the California least tern nesting site, Harbor Drive, and the Boat Channel. No part of the Camp Nimitz property would be made available for expansion of the airport.

Navy analyzed a fifth alternative designated as the Minimal Airport Expansion Alternative that is similar to the Preferred Alternative. On the main part of the base, it proposed to develop an educational complex, a golf course, restaurants, retail stores, museums, a recreational area, and a hotel in the same places and configurations as in the Preferred Alternative. This Alternative, however, would build 450 apartments and townhouses on the same 39-acre site in the southwestern part of the property where the Preferred Alternative would build 350 houses and townhouses.

On Camp Nimitz, the Minimal Airport Expansion Alternative proposed to build a 650-room, 8-story hotel on 14 acres facing Harbor Drive. North of the hotel, there would be an environmental monitoring laboratory on 8 acres. On 44 acres north and east of the laboratory and hotel, this Alternative would build a public safety institute. The California least tern nesting area would be maintained on a 21-acre site northeast of the institute. East of the nesting site, this Alternative proposed to make a 10-acre area available for the expansion of Lindbergh Field. Finally, the Minimal Airport Expansion Alternative would retain Harbor Drive and the Boat Channel.

Environmental Impacts

Navy analyzed the direct, indirect, and cumulative impacts of the disposal and reuse of this Federal property. The FEIS/EIR addressed the impacts of the Preferred Alternative, the Entertainment Alternative, the Low Traffic Alternative, the High Traffic Alternative, the Minimal Airport Expansion Alternative, and the ''No Action'' Alternative for each alternative's effects on land use, transportation and circulation, cultural resources, socioeconomic factors (including population, employment, income, housing, and environmental justice), infrastructure and utilities, biological resources, geology and soils, hydrology and water quality, air quality,

public health and safety, visual resources, noise, hazardous substances and waste, and community services and facilities. This Record Of Decision focuses on the impacts that would likely result from implementation of the Reuse Plan Alternative, designated in the FEIS/EIR as the Preferred Alternative.

The Preferred Alternative would have significant impacts on land use. The land uses proposed in the Reuse Plan would not be consistent with the traffic reduction policies articulated in the Peninsula Community Plan. This Plan was developed by the City of San Diego to evaluate projects proposed to be built in Point Loma. Navy and the City used this Plan to evaluate whether the reuse alternatives were consistent with the City's land use policies for the Point Loma area. The City recognizes that implementation of the Preferred Alternative would have significant unmitigable impacts on land use that are inconsistent with the traffic reduction policies set forth in the Peninsula Community Plan.

The proposed development of a public safety institute could have a significant land use impact if it were built on tidelands encumbered by the public trust established by California law. Known as the Tidelands Trust, it mandates that public tidelands and submerged lands be used for the benefit of the people of California for commerce, navigation, fisheries and recreation. The proposed safety institute, while public in nature, would constitute a municipal use that would not be permitted under the Trust's restrictions. The City of San Diego, however, proposes to avoid this impact by entering into an agreement with the California State Lands Commission that would impose public trust restrictions on non-trust lands in exchange for the removal of those restrictions on the property where the public safety institute would be developed.

The proposed educational, recreational, office, and retail land uses would have significant land use impacts because they are inconsistent with the Lindbergh Field Comprehensive Land Use Plan (CLUP) and San Diego's Progress Guide and General Plan (General Plan). The CLUP, adopted by the San Diego Association of Governments in 1992, describes the actions required to ensure that development around the airport is compatible with air operations. In particular, the CLUP establishes height limitations and noise attenuation requirements for new buildings and defines appropriate uses for property near the airport. The Naval Training Center property is subject to high levels of noise form Lindbergh Field. Thus, the educational, recreational, and retail uses proposed by the Preferred Alternative would be incompatible with the noise attenuation requirements of the CLUP.

San Diego's General Plan is a statement of goals, objectives, and implementing rules that guide the City's future development. Navy compared the proposed reuse alternatives with the land use policies set forth in the General Plan and concluded that the General Plan would bar the educational, recreational, and retail uses proposed by the Preferred Alternative from such noisy areas. These proposed uses, however, are not inconsistent with Navy's historical use of the property, and the City recognizes that implementation of the Reuse Plan would result in unmitigable noise-related land use impacts.

The Preferred Alternative would generate additional traffic in the area surrounding the Naval Training Center that would have significant impacts on transportation and circulation. This Alternative would generate about 53,525 average daily trips compared with 35,607 average daily trips that were associated with Navy's use of the property. Roadways that may experience traffic congestion include Rosecrans Street, Lytton Street, Barnett Avenue, Chatsworth Boulevard, and Midway Drive. The City has identified certain intersectional and roadway improvements that would reduce some of the traffic impacts. Even with these improvements, however, there would be significant impacts arising out of traffic generated by implementation of the Reuse Plan.

The Preferred Alternative could have a significant impact on cultural resources. Although no construction is currently proposed for the Historic District, future development could cause a significant impact by introducing buildings or landscaping that would be incompatible with the design or scale of the Historic District. In addition, property near Building 227 contains buried debris from the World War II era that could be disturbed by future grading.

In accordance with section 106 of the National Historic Preservation Act of 1966, 16 U.S.C. § 470(f), Navy consulted with the California State Historic Preservation Officer, the Advisory Council on Historic Preservation, the City of San Diego, and an interested party, the Save Our Heritage Organisation. These consultations focused on ways to avoid and mitigate adverse impacts to the Historic District that could result from disposal and reuse of the Naval Training Center.

In July 1998, Navy, the Advisory Council on Historic Preservation, and the State Historic Preservation Officer executed a Memorandum of Agreement (MOA). The City of San Diego and the Save Our Heritage Organisation also signed the MOA as concurring parties. This MOA defines actions that Navy must take before it conveys the Naval Training Center property.

Navy will nominate the Historic District for listing on the National Register of Historic Places in accordance with 36 C.F.R. § 60.9. Navy will also ensure that a determination of eligibility for listing on the National Register of Historic Places is concluded for the buried World War II era debris near Building 227, before that site is disturbed or before the property is conveyed. Additionally, the City of San Diego will comply with its historic preservation regulations before demolishing, altering or disturbing any building, surface or landscape element in the Historic District.

The Preferred Alternative would not have significant adverse socioeconomic impacts. On the contrary, this Alternative would generate 6,086 direct jobs and 10,767 indirect jobs.

The Preferred Alternative would not result in any significant impacts on infrastructure and utility systems. The existing utility systems are either adequate to accommodate the anticipated demand or will be upgraded by the acquiring entities to meet that demand.

The Preferred Alternative could have a significant impact on biological resources. The construction of facilities near the California least tern nesting area could have a significant impact on the suitability of this area as a nesting and breeding site for this Federally protected bird. For example, the structures, fences, lighting, and landscaping associated with the public safety institute, the hotels, and the environmental monitoring laboratory could provide perches for predators of the California least tern.

Navy held informal consultations with the United States Fish and Wildlife Service under Section 7 of the Endangered Species Act of 1973, 16 U.S.C. § 1536, to identify measures that would mitigate the impacts. During these consultations, the City of San Diego offered to restrict future development by limiting the height of structures and the number of exterior light poles near the nesting area. These measures will protect the California least tern by limiting the number of potential perches for predators. In a letter dated June 30, 1998, the Service concurred in Navy's determination that

the disposal and reuse of the Naval Training Center is not likely to have an adverse effect on the California least tern.

The Preferred Alternative could have a significant impact on other biological resources. Implementation of the Reuse Plan could result in the removal of ornamental trees that support a nesting colony of two species of herons on the main part of the base at the corner of Cushing Road and Worden Road. Construction activities or an increased human presence could also frighten herons and other waterbirds away from foraging areas in the Boat Channel. Additionally, changes in the volume and chemical composition of stormwater runoff resulting from redevelopmnet could introduce larger amounts of fertilizers, pesticides, herbicides, and hydrocarbon pollutants such as motor oils and fuels into the Boat Channel and adversely affect the eelgrass beds.

The impacts on herons and other waterbirds can be mitigated by minimizing construction noise near breeding, roosting, the foraging areas; preserving the heron nesting colony trees; and establishing a construction buffer zone around these trees during the nesting season. The potential impacts to eelgrass beds can be mitigated by adhering to best management practices for the control of erosion and runoff and by implementing stormwater pollution prevention plans.

The Preferred Alternative could have significant impacts on geologic and soil conditions. Naval Training Center San Diego is located in a highly active seismic region and is built on artificial fill that has a moderate to high potential for both liquefaction and severe erosion. Thus, new construction will be required to meet current building codes governing seismic safety. The impacts from hazards arising out of ground movement can be reduced to an insignificant level by upgrading the existing buildings to comply with current seismic safety standards. The acquiring entities can reduce the impacts from erosion by implementing soil erosion control measures.

The Preferred Alternative could have significant impacts on the quality of surface water. Stormwater discharges from paved road surfaces that contain small amounts of fuels, oils, and residual contaminants could degrade the quality of the surface water. Implementation of appropriate stormwater pollution prevention plans can reduce this impact to an insignificant level.

The Preferred Alternative would not have a significant impact on air quality. The annual emissions of the common or criteria pollutants regulated by the Clean Air Act, 42 U.S.C. §§ 7401–7671q, other than oxides of sulfur, would decrease. Emissions of these oxides would increase by about 1.34 tons per year for a total of about 7.89 tons per year. This level is well below the significance criteria threshold for this pollutant of 100 tons per year.

Section 176(c) of the Clean Air Act, 42 U.S.C. 7506, requires Federal agencies to review their proposed activities to ensure that these activities do not hamper local efforts to control air pollution. Section 176(c) prohibits Federal agencies from conducting activities in air quality areas such as San Diego that do not meet one or more of the national standards for ambient air quality, unless the activities conform to an approved implementation plan. The United States Environmental Protection Agency regulations implementing Section 176(c) recognize certain categorically exempt activities. Conveyance of title to real property and certain leases are categorically exempt activities. 40 CFR §§ 93.153(c) (2) (xiv) and (xix). Therefore, the disposal of Naval Training Center San Diego will not require Navy to conduct a conformity determination.

The Preferred Alternative could have significant impacts on public health and safety. Steam lines located above the ground and uncovered drainage channels could present hazards to children living in the proposed residential area. In addition, certain activities of the public safety institute, such as tactical training, could expose guests in the nearby hotel to safety-related hazards. The acquiring entities can mitigate these impacts by posting warning signs and installing fences.

The Preferred Alternative could have a significant impact on visual resources. Some of the existing structures would be demolished to build the proposed housing, educational facilities and hotels. Although the precise locations and dimensions of new buildings and structures have not yet been determined, the proposed redevelopment could impede the views of San Diego Bay that neighborhoods northwest of the Naval Training Center currently enjoy. This impact can be reduced to an insignificant level by following the design and visual quality policies set forth in local community plans, *i.e.*, the Peninsula Community Plan and the Midway/Pacific Highway Corridor Community Plan.

The Preferred Alternative would not have a significant impact on noise. Noise impacts from traffic generated by the Preferred Alternative would be insignificant. On all roadways for which the Preferred Alternative would contribute up to 10 percent of future traffic, the increase in noise attributable to traffic generated by the Preferred Alternative would be imperceptible to the human ear.

The proposed expansion of Lindbergh Field would not generate noise impacts. The airport expansion envisioned by the Preferred Alternative would consist of roadway and parking improvements and construction of support facilities. This expansion would not introduce any additional flight capacity. Finally, noise arising out of construction activities would be governed by the City's noise ordinance. San Diego Municipal Code, Section 59.5.0404.

Hazardous materials and hazardous waste that may be used and generated by the Preferred Alternative would not cause any significant adverse impacts. The quantity of hazardous materials used, stored, and disposed of, and the quantity of hazardous waste generated on the property would be less under the Preferred Alternative than during Navy's use of the Naval Training Center property. Hazardous materials used under the Preferred Alternative will be managed in accordance with Federal and State regulations. Hazardous wastes transported for disposal or generated under the Preferred Alternative and stored for more than 90 days will be controlled by the Resource Conservation and Recovery Act of 1976, 42 U.S.C. 6901, *et seq*.

Implementation of the Preferred Alternative would not have any impact on existing environmental contamination at the Naval Training Center. Navy will inform future property owners about the environmental condition of the property and may, where appropriate, include restrictions, notifications, or covenants in deeds to ensure the protection of human health and the environment in light of the intended use of the property.

The Preferred Alternative would not have any significant impact on most community services and facilities. This Alternative would, however, have a significant cumulative impact on schools. The Reuse Plan's proposed new houses and townhouses would result in the introduction of about 101 students into the San Diego Unified School District. The military family housing proposed for the 72-acre property that Navy transferred to the Marine Corps would introduce an additional 373 students into the School District.

The impact of the Reuse Plan would be mitigated by the local development fee assessed on new construction and applied to finance the renovation and

construction of schools. Under the current local development fee schedule, the Preferred Alternative would generate about $1.4 million in school fees. Additionally, Navy will make property available for school facilities on the 72-acre Marine Corps tract.

Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, reprinted in 42 U.S.C. 4321 note, requires that Navy determine whether any low-income and minority populations will experience disproportionately high and adverse human health or environmental effects from the proposed action. While there are substantial minority and low-income populations residing in the vicinity of the Naval Training Center, these populations will not experience disproportionately high and adverse human health or environmental effects. Indeed, the employment opportunities created by implementing the Preferred Alternative would have beneficial effects on minority and low-income populations residing within the region.

Navy also analyzed the impacts on children pursuant to Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks, 3 C.F.R. 198 (1998). Under the Preferred Alternative, the largest concentration of children would be present in the residential and recreational areas. The Preferred Alternative would not result in any disproportionate environmental health or safety risks to children.

Mitigation

The decision to dispose of Naval Training Center San Diego does not require Navy to implement any mitigation measures beyond those discussed here. Navy will take certain actions to implement existing agreements and regulations. These actions were treated in the FEIS/EIR as agreements or regulatory requirements rather than as mitigation. Before conveying any property at Naval Training Center San Diego, Navy will nominate the Historic District to the National Register of Historic Places and determine the eligibility of the property near Building 227, containing World War II era debris, for listing on the Register.

The FEIS/EIR identified and discussed those actions that will be necessary to mitigate impacts associated with the reuse and redevelopment of Naval Training Center San Diego. The acquiring entities, under the direction of Federal, State, and local agencies with regulatory authority over protected resources, will be responsible for implementing any necessary mitigation measures.

Comments Received on the FEIS

Navy and the City of San Diego received comments on the FEIS/EIR from four local governmental agencies, three organizations and one individual. The local agencies were the Metropolitan Transit Development Board, the San Diego Unified Port District, the San Diego County Water Authority, and the San Diego Unified School District. The organizations were the Harbor Lights Foundation, the San Diego Archaeological Center, and the San Diego Audubon Society. All of the substantive comments concerned issues discussed in the FEIS/EIR. Those comments that require clarification are addressed below.

The Water Authority asked Navy to conduct an analysis of the quantity of water that would be required by the redevelopment proposed in the Reuse Plan. Navy performed an analysis that meets the needs of the Water Authority in Section 4 of the FEIS/EIR, *i.e.*, Environmental Consequences. The Reuse Plan would not have a significant impact on the potable water supply.

The Water Authority also suggested mitigation measures to ensure that water conservation practices would be observed in the redevelopment proposed by the Reuse Plan. In particular, the Water Authority asked Navy to impose requirements such as the use of low flow plumbing fixtures; landscape plantings that need little watering; and reclaimed water on the golf course. Section 17921.3 of the California Health and Safety Code requires the use of low flow fixtures in new buildings constructed in the State, and the City's plumbing standards require the use of water conserving fixtures when replacing fixtures in existing structures. San Diego Municipal Ordinance Section 93.0208. In the exercise of its local land use authority, the City will place appropriate water conservation requirements on future development projects at the Naval Training Center property.

The Port asked Navy to clarify that the acquiring entities must grant aviation easements to mitigate noise impacts arising out of the incompatibility of the Reuse Plan with the Lindbergh Field CLUP. To address the Port's concern, the City will ensure that an navigation easement for noise impacts in favor of the Lindbergh Field operator, currently the Port, will be placed on the property.

The Port also commented that noise impacts on residential and hotel land uses might occur if the City does not require that subsequent developers conduct acoustical analyses and implement attenuation measures as a condition of granting building permits. Thus, the Port asked that a mitigation measure be included in the FEIS/EIR that would compel the City to comply with the noise insulation standards set forth in Title 24 of the California Administrative Code. The City will continue to comply with its own regulations and noise ordinances and it has adopted the State noise standards as part of its own noise ordinances. Therefore, no additional mitigation measures are required.

The School District commented that the proposed mitigation for the Reuse Plan's cumulative impact on school facilities was inadequate. The District asked that the mitigation include full funding for the construction of an elementary school. As explained in response to the School District's comments on the DEIS/EIR, Navy's disposal of the Naval Training Center property would not cause any impacts requiring Navy to fund the construction of new school facilities. The FEIS/EIR discussed mitigation measures that would reduce school overcrowding to an insignificant level. The acquiring entities and the School District will be responsible for implementing appropriate mitigation measures.

Regulations Governing the Disposal Decision

Since the proposed action contemplates a disposal action under the Defense Base Closure and Realignment Act of 1990 (DBCRA), Public Law 101–510, 10 U.S.C. § 2687 note, Navy's decision was based upon the environmental analysis in the FEIS/EIR and application of the standards set forth in the DBCRA, the Federal Property Management Regulations (FPMR), 41 CFR Part 101–47, and the Department of Defense Rule on Revitalizing Base Closure Communities and Community Assistance (DoD Rule), 32 CFR Parts 174 and 175.

Section 101–47.303–1 of the FPRM requires that disposals of Federal property benefit the Federal Government and constitute the ''highest and best use'' of the property. Section 101–47.4909 of the FPMR defines the ''highest and best use'' as that use to which a property can be put that produces the highest monetary return from the property, promotes its maximum value, or services a public or institutional propose. The ''highest and best use'' determination must be based upon the property's economic potential, qualitative values inherent in the property, and utilization factors affecting land use such as zoning,

physical characteristics, other private and public uses in the vicinity, neighboring improvements, utility services, access, roads, location, and environmental and historical considerations.

After Federal property has been conveyed to non-Federal entities, the property is subject to local land use regulations, including zoning and subdivision regulations, and building codes. Unless expressly authorized by statute, the disposing Federal agency cannot restrict the future use of surplus Government property. As a result, the local community exercises substantial control over future use of the property. For this reason, local land use plans and zoning affect determination of the ''highest and best use'' of surplus Government property.

The DBCRA directed the Administrator of the General Services Administration (GSA) to delegate to the Secretary of Defense authority to transfer and dispose of base closure property. Section 2905(b) of the DBCRA directs the Secretary of Defense to exercise this authority in accordance with GSA's property disposal regulations, set forth in Part 101–47 of the FPMR. By letter dated December 20, 1991, the Secretary of Defense delegated the authority to transfer and dispose of base closure property closed under the DBCRA to the Secretaries of the Military Departments. Under this delegation of authority, the Secretary of the Navy must follow FPMR procedures for screening and disposing of real property when implementing base closures. Only where Congress has expressly provided additional authority for disposing of base closure property, *e.g.*, the economic development conveyance authority established in 1993 by Section 2905(b)(4) of the DBCRA, may Navy apply disposal procedures other than those in the FPMR.

In Section 2901 of the National Defense Authorization Act for Fiscal Year 1994, Public Law 103–160, Congress recognized the economic hardship occasioned by base closures, the Federal interest in facilitating economic recovery of base closure communities, and the need to identify and implement reuse and redevelopment of property at closing installations. In Section 2903(c) of Public Law 103–160, Congress directed the Military Departments to consider each base closure community's economic needs and priorities in the property disposal process. Under Section 2905(b)(2)(E) of the DBCRA, Navy must consult with local communities before it disposes of base closure property and must consider local plans developed for reuse and redevelopment of the surplus Federal property.

The Department of Defense's goal, as set forth in Section 174.4 of the DoD Rule, is to help base closure communities achieve rapid economic recovery through expeditious reuse and redevelopment of the assets at closing bases, taking into consideration local market conditions and locally developed reuse plans. Thus, the Department has adopted a consultative approach with each community to ensure that property disposal decisions consider the LRA's reuse plan and encourage job creation. As a part of this cooperative approach, the base closure community's interests, as reflected in its zoning for the area, play a significant role in determining the range of alternatives considered in the environmental analysis for property disposal. Furthermore, Section 175.7(d)(3) of the DoD Rule provides that the LRA's plan generally will be used as the basis for the proposed disposal action.

The Federal Property and Administrative Services Act of 1949, 40 U.S.C. 484, as implemented by the FPMR, identifies several mechanisms for disposing of surplus base closure property: by public benefit conveyance (FPMR Sec. 101–47.303–2); by negotiated sale (FPMR Sec. 101–47.304–9); and by competitive sale (FPMR 101–47.304–7). Additionally, in Section 2905(b)(4), the DBCRA established economic development conveyances as a means of disposing of surplus base closure property. The selection of any particular method of conveyance merely implements the Federal agency's decision to dispose of the property. Decisions concerning whether to undertake a public benefit conveyance or an economic development conveyance, or to sell property by negotiation or by competitive bid, are left to the Federal agency's discretion. Selecting a method of disposal implicates a broad range of factors and rests solely within the Secretary of the Navy's discretion.

Conclusion

The LRA's proposed reuse of Naval Training Center San Diego, reflected in the Reuse Plan, is consistent with the prescriptions of the FPMR and Section 174.4 of the DoD Rule. The LRA has determined in its Reuse Plan that the property should be used for several purposes including residential, educational, commercial, public and recreational uses. These uses include housing, educational facilities, two hotels, retail stores, an environmental monitoring laboratory and administrative facility, a public safety institute, a nesting site for the California least tern, expansion of the adjacent Lindbergh Field, and athletic fields and open spaces. The property's location, physical characteristics and existing infrastructure as well as the current uses of adjacent property make it appropriate for the proposed uses.

The Preferred Alternative responds to local economic conditions, promotes rapid economic recovery from the impact of the closure of Naval Training Center San Diego, and is consistent with President Clinton's Five-Part Plan for Revitalizing Base Closure Communities, which emphasizes local economic redevelopment of the closing military facility and creation of new jobs as the means to revitalize the communities. 32 CFR Parts 174 and 175, 59 FR 16123 (1994).

Although the ''No Action'' Alternative has less potential for causing adverse environmental impacts, this Alternative would not take advantage of the property's location, physical characteristics and infrastructure or the current uses of adjacent property. Additionally, it would not foster local economic redevelopment of the Naval Training Center property.

The acquiring entities, under the direction of Federal, State, and local agencies with regulatory authority over protected resources, will be responsible for adopting practicable means to avoid or minimize environmental harm that may result from implementing the Reuse Plan.

Accordingly, Navy will dispose of Naval Training Center San Diego in a manner that is consistent with the City of San Diego's Reuse Plan for the property.

Dated: March 10, 1999.

William J. Cassidy, Jr.,

Deputy Assistant Secretary of the Navy (Conversion and Redevelopment).

[FR Doc. 99–7209 Filed 3–23–99; 8:45 am]

BILLING CODE 3810–FF–M

DEPARTMENT OF EDUCATION

[CFDA No. 84.303A]

Office of Educational Research and Improvement (OERI), Technology Innovation Challenge Grants Program; Notice Announcing a Two-Tier Review Process for Applications Received Under the Fiscal Year (FY) 1999 Competition

SUMMARY: The Secretary announces the use of a two-tier review process to evaluate applications submitted for new

awards under the FY 1999 Technology Innovation Challenge Grants program. The Secretary takes this action to ensure a thorough review and assessment of the large number of applications that are expected to be received under the FY 1999 competition. This competition was announced previously in a notice published in the **Federal Register** on December 22, 1998 (63 FR 70977). That notice, however, did not explain that a two-tier review process is to be used in the evaluation of applications. Because the announcement of a two-tier review process does not affect the contents of applications in this competition, the date by which applications must be received remains the same as originally announced, March 12, 1999.

SUPPLEMENTARY INFORMATION: In prior fiscal years, applications for awards under this program were evaluated and selected in accordance with procedures established in the notice of final selection criteria, selection procedures, and application procedures for Technology Innovation Challenge Grants published in the **Federal Register** on May 12, 1997 (62 FR 26175). This year, however, these procedures for ''evaluation and selection of applications'' will not apply to this program. Instead, the Department will follow the procedures in 34 CFR part 75 except as indicated below.

Application Review Procedures: The Secretary will use a two-tier process for reviewing applications in this competition. In the first tier, all eligible applications will be reviewed. The applications with the highest scores in the first tier—the top-ranked 60—will be reviewed in the second tier. In the event of a tie for the 60th place in the rank order of applications in the first tier, all applications tied for that final position will be considered in the second tier. The same evaluation criteria will be used in the second tier as in the first tier. The Secretary will select applications for funding on the basis of the rank ordering of applications in the second tier. In all other respects, the Secretary will follow the procedures in the Education Department General Administrative Regulations (EDGAR), 34 CFR part 75, in reviewing applications.

Waiver of Proposed Rulemaking: In accordance with the Administrative Procedure Act (5 U.S.C. 553), it is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations. However, these exceptions to EDGAR make procedural changes only. Therefore, under 5 U.S.C. 553(b)(A), proposed rulemaking is not required.

FOR FURTHER INFORMATION CONTACT: Elizabeth Payer, U.S. Department of Education, Office of Educational Research and Improvement, 555 New Jersey Avenue NW., Washington, DC 20208–5544. Telephone 202 208–3882. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

Individuals with disabilities may obtain a copy of the application package in an alternate format, also, by contacting that person. However, the Department is not able to reproduce in an alternate format the standard forms included in the application package.

Electronic Access to This Document

Anyone may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or portable document format (pdf) on the World Wide Web at either of the following sites:

http://ocfo.gov/fedreg.htm

http://www.ed.gov/news.html

To use the pdf you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the pdf, call the U.S. Government Printing Office at (202) 512–1530, or toll free, at 1–888–293–6498.

Anyone may also view these documents in text copy only on an electronic bulletin board of the Department. Telephone: (202) 219–1511 or, toll free, 1–800–222–4922. The documents are located under Option G-Files/Announcements, Bulletins and Press Releases.

Note: The official version of a document is the document published in the **Federal Register**.

PROGRAM AUTHORITY: 20 U.S.C. 6846.

Dated: March 19, 1999.

C. Kent McGuire,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 99–7188 Filed 3–23–99; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

National Assessment Governing Board; Meeting

AGENCY: National Assessment Governing Board; Education.

ACTION: Notice of teleconference.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming teleconference of the Design and Methodology Committee of the National Assessment Governing Board. This notice also describes the functions of the Board. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATES: March 26, 1999.

TIME: 2:30–4:00 p.m., EST.

LOCATION: National Assessment Governing Board, 800 North Capitol Street, NW, Suite #825, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mary Ann Wilmer, Operations Officer, National Assessment Governing Board, Suite 825, 800 North Capitol Street, NW, Washington, D.C., 20002–4233, Telephone: (202) 357–6938.

SUPPLEMENTARY INFORMATION: The National Assessment Governing Board is established under section 412 of the National Education Statistics Act of 1994 (Title IV of the Improving America's Schools Act of 1994) (Pub. L. 103–382).

The Board is established to formulate policy guidelines for the National Assessment of Educational Progress. The Board is responsible for selecting subject areas to be assessed, developing assessment objectives, identifying appropriate achievement goals for each grade and subject tested, and establishing standards and procedures for interstate and national comparisons.

On March 26, 1999 the Design and Methodology Committee of the National Assessment Governing Board will hold a teleconference from 2:30–4:00 p.m. The purpose of this meeting is to endorse a plan of action to achieve the goals of the Board's redesign policy regarding sampling issues. The Committee will be acting under the prospective authority of the Board.

Records are kept of all Board proceedings and are available for public inspection at the U.S. Department of Education, National Assessment Governing Board, Suite 825, 800 North

Capitol Street, NW, Washington, D.C., from 8:30 a.m. 5:00 p.m.

Roy Truby,

Executive Director, National Assessment Governing Board.

[FR Doc. 99–7133 Filed 3–23–99; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Secretary of Energy Advisory Board; Notice of Open Meeting

AGENCY: Department of Energy.

SUMMARY: Consistent with the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), notice is hereby given of the following advisory committee meeting:

Name: Secretary of Energy Advisory Board—Task Force on Fusion Energy.

DATES AND TIMES: Monday, March 29, 1999, 8:30 AM–5:00 PM and Tuesday, March 30, 1999, 8:30 AM–12:00 PM.

ADDRESSES: U.S. Department of Energy, Program Review Center (Room 8E–089), Forrestal Building, 1000 Independence Avenue, SW, Washington, D.C. 20585. Note: Members of the public are requested to contact the Office of the Secretary of Energy Advisory Board at (202) 586–7092 in advance of the meeting (if possible), to expedite their entry to the Forrestal Building on the day of the meeting.

FOR FURTHER INFORMATION CONTACT: Richard C. Burrow, Secretary of Energy Advisory Board (AB–1), U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, D.C. 20585, (202) 586–1709 or (202) 586–6279 (fax).

SUPPLEMENTARY INFORMATION: The purpose of the Task Force on Fusion Energy is to review the Department of Energy's plans for research and development of four fusion related technologies—pulsed-power, lasers, ion drivers, and magnetic fusion—and to provide advice to the Secretary of Energy Advisory Board on how to structure the Department's fusion energy programs, both inertial and magnetic. The review is to focus on the scientific quality of the programs, the goals and objectives of the programs, and the energy potential of each technology. The findings and recommendation of the Task Force on Fusion Energy are to comment on the goals and objectives of the Department's fusion energy related programs, provide a critique of the current development strategies, suggest changes in the overall fusion energy roadmap, and recommended funding levels.

Tentative Agenda

Monday, March 29, 1999

8:30–9:00 AM Opening Remarks, Introductions and Objectives—Dr. Richard Meserve, Task Force Chairman
9:00–9:45 AM Briefing and Discussion: Review of President's Committee of Advisors on Science and Technology (PCAST) Reviews of Fusion Energy
9:45–10:00 AM Break
10:00–11:15 AM Briefing and Discussion: Overview of the Department of Energy Fusion Energy Program
11:15–12:00 PM Briefing and Discussion: Overview of the Inertial Confinement Fusion Program
12:00–1:00 PM Lunch
1:00–2:30 PM Briefing and Discussion: Magnetic Fusion Energy Program Status and Plans
2:30–2:45 PM Break
2:45–4:15 PM Briefing and Discussion: Inertial Fusion Energy Program Status and Plans
4:15–4:45 PM Briefing and Discussion: Magnetic and Inertial Fusion Energy Roadmap
4:45–5:00 PM Public Comment Period
5:00 PM Adjourn

Tuesday, March 30, 1999

8:30–8:35 AM Opening Remarks and Objectives—Dr. Richard Meserve, Task Force Chairman
8:35–9:15 AM Briefing and Discussion: Fusion Energy Sciences Advisory Committee (FESAC) Review
9:15–10:00 AM Working Session: Task Force Discussion/Question and Answer Period
10:00–10:15 AM Break
10:15–11:45 AM Working Session: Task Force Work Plan Discussion and Development
11:45–12:00 PM Public Comment Period
12:00 PM Adjourn

This tentative agenda is subject to change. The final agenda will be available at the meeting.

Public Participation

The Chairman of the Task Force is empowered to conduct the meeting in a fashion that will, in the Chairman's judgment, facilitate the orderly conduct of business. During its meeting in Washington, D.C., the Task Force welcomes public comment. Members of the public will be heard in the order in which they sign up at the beginning of the meeting. The Task Force will make every effort to hear the views of all interested parties. Written comments may be submitted to Skila Harris, Executive Director, Secretary of Energy Advisory Board, AB–1, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, D.C. 20585. This notice is being published less than 15 days before the date of the meeting due to the late resolution of programmatic issues.

Minutes

Minutes and a transcript of the meeting will be available for public review and copying approximately 30 days following the meeting at the Freedom of Information Public Reading Room, 1E–190 Forrestal Building, 1000 Independence Avenue, SW, Washington, D.C., between 9:00 AM and 4:00 PM, Monday through Friday except Federal holidays. Further information on the Task Force on Fusion Energy may be found at the Secretary of Energy Advisory Board's web site, located at http://www.hr.doe.gov/seab.

Issued at Washington, D.C., on March 18, 1999.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 99–7214 Filed 3–23–99; 8:45 am]

BILLING CODE 6450–01–U

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–256–001]

Clear Creek Storage Company, L.L.C.; Notice of Filing

March 18, 1999.

Take notice that on March 3, 1999, Clear Creek Storage Company, L.L.C. (Clear Creek), 180 East 100 South, P.O. Box 45601, Salt Lake City, Utah 84111 filed a revised Exhibit P. containing a pro forma tariff and initial rates as required by Ordering Paragraph (B) of the Commission's March 2, 1998 order in Docket No. CP98–256–000.

Clear Creek states that the revised Exhibit P comprises a pro forma copy of Original Volume No. 1 of its FERC Gas Tariff as well as supporting data and information regarding proposed rates that are applicable to open-access firm and interruptible storage service.

Clear Creek anticipates providing storage service in the Clear Creek storage facility no later than September 1, 1999 and has requested that the Commission issue an order regarding its revised Exhibit P in such time that a compliance tariff filing may be rendered and accepted by the Commission to become effective September 1, 1999.

Clear Creek states that a copy of this filing has been served upon all parties on the official service list in this proceeding.

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, Room 1A, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests must be filed as provided in section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the Internet at *http:/www.ferc.fed.us/online/rims.htm* (call 202–208–222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–7127 Filed 3–23–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

[Docket No. CP99–250–000]

Reliant Energy Gas Transmission; Notice of Request Under Blanket Authorization

March 18, 1999.

Take notice that on March 11, 1999, Reliant Energy Gas Transmission Company (REGT), formerly NorAm Gas Transmission Company (NGT), 1111 Louisiana Street, Houston, Texas 77002–5231, filed in Docket No. CP99–250–000 a request pursuant to Sections 157.205, 157.216 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.216 and 157.211) for authorization to abandon, construct and operate certain facilities in Louisiana, under REGT's blanket certificate issued in Docket No. CP82–384–000 and CP82–384–001 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. The application may be viewed on the web at www.ferc.fed.us. Call (202) 208–2222 for assistance.

REGT proposes to abandon two 2-inch Fisher regulators and one 1-inch relief valve and install two 2-inch Fisher ET Barton Control regulators and one 3-inch Axialflow relief valve to upgrade a meter station on Line HM–34 in Union Parish, Louisiana, to provide additional deliveries to and on behalf of Reliant Energy Arkla, a distribution division of Reliant Energy, Incorporation (Arkla). Arkla has requested that this meter station be upgraded to allow an increase in deliveries. The estimated volumes to be delivered through these upgraded facilities are approximately 946,080 Dth annually and 4,320 Dth on a peak day. The facilities will be constructed and placed in service at an estimated cost of $16,620 and Arkla will reimburse REGT for the cost of construction.

REGT states that the proposed activity is not prohibited by its existing tariff and that there is sufficient capacity to accommodate the proposed changes without detriment or disadvantage to REGT's other customers. That its peak day and annual deliveries will not be effected and that the total volumes to be delivered to the customer after the request do not exceed the total volumes authorize prior to the request.

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. 99–7128 Filed 3–23–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–254–000]

Southern Natural Gas Company; Notice of Request Under Blanket Authorization

March 18, 1999.

Take notice that on March 12, 1999, Southern Natural Gas Company (Southern), Post Office Box 2563, Birmingham, Alabama 35202–2563, filed a request with the Commission in Docket No. CP99–254–000, pursuant to Sections 157.205 and 157.216(b) of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to abandon 4-inch Certain Teed Pipeline authorized in blanket certificate issued in Docket No. CP82–406–000, all as more fully set forth in the request on file with the Commission and open to public inspection. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Southern proposes to abandon its 4-inch Certain Teed Pipeline which consists of approximately 500 feet of pipeline located at or near mile post 110 on its 14″ Wrens-Savannah Line. Southern states that it has not provided natural gas service to the Certain Teed Plant in approximately ten years and that it has already abandoned the meter station where it previously delivered gas to the plant. Southern further states that the pipeline would be abandoned in place.

Any person or the Commission's staff may, within 45 days after the Commission has issued this notice, 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 NGA (18 CFR 157.205) a protest to the request. If no protest is filed within the allowed time, 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 NGA.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–7130 Filed 3–23–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–420–003]

Southern Natural Gas Company; Notice of Conference

March 18, 1999.

The above referenced docket relates to Southern Natural Gas Company's (Southern) operational flow orders (OFOs). Parties have raised certain concerns with Southern's one-year report regarding OFOs. In order to facilitate the resolution of the issues in this proceeding, the Commission Staff is convening an informal conference among the interested parties.

Take notice that the conference will be held on Thursday, April 15, 1999, at 10 a.m., in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

Southern and interested parties should be prepared to discuss in detail the OFOs in order to resolve the specific concerns raised by the parties in these proceedings.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–7132 Filed 3–23–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–253–000]

Texas Eastern Transmission Corporation; Notice of Request Under Blanket Authorization

March 18, 1999.

Take notice that on March 12, 1999, Texas Eastern Transmission Corporation (Texas Eastern), 5400 Westheimer Court, Houston, Texas 77056–5310, filed in Docket No. CP99–253–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.211) for authorization to construct and operate a delivery point in Monroe County, Mississippi so that Texas Eastern may provide natural gas deliveries to the town of Shannon, Mississippi under Texas Eastern's blanket certificate issued in Docket No. CP82–535–000 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. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Texas Eastern proposes to construct and install a single 2-inch tap valve, a 2-inch check valve and a 2-inch insulating flange on Texas Eastern's existing 6-inch Line No. 25–B, at approximately Mile Post 0.02, in Monroe County, Mississippi. Texas Eastern states that the town of Shannon will install or cause to be installed dual 2-inch turbine meter runs and associated piping and valves (meter station), approximately 25 feet of 2-inch pipeline which will extend from the meter station to the tap and gas measurement equipment. Texas Eastern states that the Town of Shannon will reimburse Texas Eastern 100% of the coast and expenses incurred to install the tap.

Texas Eastern states that its existing tariff does not prohibit the addition of this facility, the delivery point will have no effect on Texas Eastern's peak day or annual deliveries, and its proposal will be accomplished without detriment or disadvantage to Texas Eastern's other customers.

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. 99–7129 Filed 3–23–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 340–051]

Alabama Power Company; Notice of Availability of Environmental Assessment

March 18, 1999.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47910), the Office of Hydropower Licensing (OHL) has prepared an environmental assessment (EA) for an application to amend the Recreation Plan and change the Project Boundary on Lake Martin. Alabama Power Company proposes to remove the 30-acre Tallassee Recreational Use Area (RUA), No. 7 from the project boundary; add 40 acres to RUA No. 1 (West of Dadeville); and reclassify the Chapman Creek RUA No. 8 to Natural Undeveloped land from Recreational Use land. In the EA, staff concludes that approval of the licensee's proposal would not constitute a major Federal action significantly affecting the quality of the human environment. The Martin Dam Project is located on the Tallapoosa River in Tallapoosa, Coosa and Elmore Counties, Alabama.

The EA was written by staff in the Office of Hydropower Licensing, Federal Energy Regulatory Commission. Copies of the EA are available for review at the Commission's Reference and Information Center, Room 2–A, 888 North Capitol Street, NE, Washington, DC 20426. The EA may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (please call (202) 208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–7131 Filed 3–23–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Western Area Power Administration

Boulder Canyon Project—Firm Power Services Base Charge

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of Proposed Base Charge Adjustments.

SUMMARY: The Western Area Power Administration's (Western) Desert Southwest Region (DSW) is initiating a rate adjustment process for the firm power services base charge for the Boulder Canyon Project (BCP) for FY 2000. The annual base charge adjustments are a requirement of the rate setting methodology approved on a final basis by the Federal Energy Regulatory Commission (FERC) on April 19, 1996. The existing rate schedule was placed into effect on November 1, 1995. The power repayment study indicates the proposed base charge herein for BCP firm power services is appropriate to provide sufficient revenue to pay all

annual costs (including interest expense), plus repayment of required investment within the allowable time period.

The proposed base charge is explained in greater detail during the informal and formal processes and made available to all power customers and interested parties.

The proposed base charge for firm power services is expected to become effective October 1, 1999. This **Federal Register** notice initiates the formal process for the proposed base charge.

DATES: The consultation and comment period will begin from the date of publication of this **Federal Register** notice and will end June 22, 1999. A public information forum at which Western will present a detailed explanation of the proposed base charge is scheduled for April 21, 1999, beginning at 10:00 a.m. MST, at the Desert Southwest Regional Office. A public comment forum at which Western will receive oral and written comments is scheduled for June 2, 1999, beginning at 10:30 a.m. MST, at the same location.

ADDRESSES: Written comments should be sent to: Mr. J. Tyler Carlson, Regional Manager, Desert Southwest Customer Service Region, Western Area Power Administration, P.O. Box 6457, Phoenix, AZ 85005–6457. Western should receive written comments by the end of the consultation and comment period to be assured consideration. The public forums will be held at the Desert Southwest Regional Office, 615 South 43rd Avenue, Phoenix, Arizona.

FOR FURTHER INFORMATION CONTACT: Mr. Maher A. Nasir, Rates Team Lead, Desert Southwest Customer Service Region, Western Area Power Administration, P.O. Box 6457, Phoenix, AZ 85005–6457, (602) 352–2768.

SUPPLEMENTARY INFORMATION:

Proposed Base Charge for Firm Power Services

In accordance with established rate design principles for the BCP firm power services, Western has established a proposed base charge, consisting of an energy dollar and capacity dollar, and has established a forecast energy rate and forecast capacity rate. The proposed base charge for BCP firm power services is based on an annual revenue requirement of $47,929,196. The proposed base charge consists of an energy dollar amount of $24,752,366 and a capacity dollar amount of $23,176,831. The proposed forecast energy rate is 4.6249 mills/kilowatthour (mills/kWh), and the proposed forecast capacity rate is $0.9900 per kilowattmonth ($/kWmo).

The existing BCP firm power services base charge is based on an annual revenue requirement of $48,842,126, consisting of an energy dollar amount of $25,208,831 and a capacity dollar amount of $23,633,296. The existing BCP forecast energy rate is 4.8646 mills/kWh and the forecast capacity rate is $1.0095/kWmo.

Authorities

Since the proposed change to the base charge constitutes a major rate adjustment as defined in 10 CFR 903.2, both a public information forum and a public comment forum will be held. After review of public comments, Western will recommend the proposed base charge or revised proposed base charge for approval on an interim basis by the Department of Energy (DOE) Deputy Secretary.

The proposed firm power services base charge for BCP is being established pursuant to the Department of Energy Organization Act (42 U.S.C. 7101, *et seq.*) and the Reclamation Act of 1902 (43 U.S.C. 371, *et seq.*), as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)) and section 8 of the Act of August 31, 1964 (16 U.S.C. 837g), the Colorado River Basin Project Act of 1968 (43 U.S.C. 1501, *et seq.*), the Colorado River Storage Project Act (43 U.S.C. 620, *et seq.*), the Boulder Canyon Project Act (43 U.S.C. 617, *et seq.*), the Boulder Canyon Project Adjustment Act (43 U.S.C. 618, *et seq.*), the Hoover Power Plant Act of 1984 (43 U.S.C. 619, *et seq.*), the General Regulations for Power Generation, Operation, Maintenance, and Replacement at the BCP, Arizona/Nevada (43 CFR Part 431) published in the **Federal Register** at 51 FR 23960 on July 1, 1986, and the General Regulations for the Charges for the Sale of Power From the BCP, Final Rule (10 CFR Part 904) published in the **Federal Register** at 50 FR 37837 on September 18, 1985, and the DOE financial reporting policies, procedures, and methodology (DOE Order No. RA 6120.2 dated September 20, 1979).

By Amendment No. 3 to Delegation Order No. 0204–108, published November 10, 1993 (58 FR 59716), the Secretary of DOE delegated (1) the authority to develop long-term power and transmission rates on a nonexclusive basis to the Administrator of Western; (2) the authority to confirm, approve, and place such rates in effect on an interim basis to the Deputy Secretary; and (3) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to FERC. Existing DOE procedures for public participation in power rate adjustments (10 CFR Part 903) became effective on September 18, 1985 (50 FR 37835).

Regulatory Procedure Requirements

Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601, *et seq.*) requires Federal agencies to perform a regulatory flexibility analysis if a proposed rule is likely to have a significant economic impact on a substantial number of small entities and there is a legal requirement to issue a general notice of proposed rulemaking. Western has determined that this action relates to rates or services offered by Western, and therefore is not a rule within the purview of the Act.

Environmental Compliance

In compliance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321, *et seq.*); the Council On Environmental Quality Regulations (40 CFR Parts 1500–1508); and DOE NEPA Regulations (10 CFR Part 1021), Western conducts environmental evaluations of the proposed base charge and develops the appropriate level of documentation.

Determination Under Executive Order 12866

Western has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no clearance of this notice by the Office of Management and Budget is required.

Availability of Information

All brochures, studies, comments, letters, memorandums, and other documents made or kept by Western for the purpose of developing the proposed base charge will be made available for inspection and copying at Western's Desert Southwest Regional Office at 615 South 43rd Avenue in Phoenix, Arizona.

Dated: March 5, 1999.

Michael S. Hacskaylo,

Administrator.

[FR Doc. 99–7213 Filed 3–23–99; 8:45 am]

BILLING CODE 6450–01–U

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00565; FRL–6046–4]

Renewal of Pesticide Information Collection Activities; Data Call-In for Special Review Chemicals and Registration Review Program; Request for Comments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this notice announces that EPA is seeking public comment on the following Information Collection Request (ICR): ''Data Call-In for Special Review Chemicals and Registration Review Program,'' (EPA ICR No. 0922.06, OMB No. 2070–0057). This ICR involves a collection activity that is currently approved and recently amended to reflect the Agency's need to collect additional information to meet the new requirements in the Food Quality Protection Act of 1996. The ICR describes the nature of the information collection activity and its expected burden and costs. Before submitting this ICR to the Office of Management and Budget (OMB) for review and approval under the PRA, EPA is soliciting comments on specific aspects of the collection.

DATES: Written comments must be received on or before May 24, 1999.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit III. of this document.

FOR FURTHER INFORMATION CONTACT: Cameo Smoot, Office of Pesticide Programs, Mail Code (7506C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, Telephone: 703–305–5454, fax: 703–305–5884, e-mail: smoot.cameo@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Does This Notice Apply To Me?

You may be potentially affected by this notice if you are a pesticide registrant of a pesticide product and are required to submit data to support continued registration of your product. By law, EPA must periodically review each pesticide registration (see section 3(g) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA)). The EPA may require registrants to generate and submit data to the Agency when data is needed to assess whether the existing pesticide registration poses an unreasonable risk to human health or the environment (see section 3(c)(2)(B) of FIFRA).

Potentially affected categories and entities may include, but are not limited to the following:

Category	NAICS Code	SIC Codes	Example of Potentially Affected Entity
Pesticide and other agricultural chemical manufacturing	325320	286—Industrial organic chemicals 287—Agricultural chemicals	Pesticide registrants

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this table could also be affected. You or your business are affected by this action if you have registered a pesticide with the Agency pursuant to FIFRA. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed in the ''FOR FURTHER INFORMATION CONTACT'' section.

II. How Can I Get Additional Information or Copies of This Document or Other Support Documents?

A. Electronic Availability

Electronic copies of this document and the ICR are available from the EPA Home Page at the **Federal Register** - Environmental Documents entry for this document under ''Laws and Regulations'' (http://www.epa.gov/fedrgstr/). You can easily follow the menu to find this **Federal Register** notice using the publication date or the **Federal Register** citation for this notice. Although a copy of the ICR is posted with the **Federal Register** notice, you can also access a copy of the ICR by going directly to http://www.epa.gov/icr/. You can then easily follow the menu to locate this ICR by the EPA ICR number, the OMB control number, or the title of the ICR.

B. Fax-on-Demand

Using a faxphone call 202–401–0527 and select item 6056 for a copy of the ICR.

C. In Person or By Phone

If you have any questions or need additional information about this notice or the ICR referenced, please contact the person identified in the ''FOR FURTHER INFORMATION CONTACT'' section.

In addition, the official record for this notice, including the public version, has been established for this notice under docket control number OPP–00565 (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as Confidential Business Information (CBI), is available for inspection in the Office of Pesticide Programs (OPP) Public Docket, Rm. 119, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The OPP Public Docket telephone number is 703–305–5805.

III. How Can I Respond To This Notice?

A. How and To Whom Do I Submit the Comments?

You may submit comments through the mail, in person, or electronically. Be sure to identify the appropriate docket control number, OPP–00565, in your correspondence.

1. *By mail.* Submit written comments to: OPP Public Docket, Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

2. *In person or by courier.* Deliver written comments to: OPP Public Docket, Public Information and Records Integrity Branch, Rm. 119, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, Telephone: 703–305–5805.

3. *Electronically.* Submit your comments and/or data electronically by e-mail to: opp-docket@epa.gov. Please note that you should not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comment

and data will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket control number OPP–00565. Electronic comments on this notice may also be filed online at many Federal Depository Libraries.

B. How Should I Handle CBI Information That I Want To Submit To the Agency?

You may claim information that you submit in response to this notice as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must also be submitted for inclusion in the public record. Information not marked confidential will be included in the public docket by EPA without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult with the technical person listed in the ''FOR FURTHER INFORMATION CONTACT'' section.

C. What Information is EPA Particularly Interested in?

Pursuant to section 3506(c)(2)(A) of PRA, EPA specifically solicits comments and information to enable it to:

1. Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility.

2. Evaluate the accuracy of the Agency's estimates of the burdens of the proposed collections of information.

3. Enhance the quality, utility, and clarity of the information to be collected.

4. Minimize the burden of the collections of information on those who are to respond, including through the use of appropriate automated or electronic collection technologies or other forms of information technology, e.g., permitting electronic submission of responses.

D. What Should I Consider When I Prepare My Comments for EPA?

We invite you to provide your views on the estimates provided, new approaches we haven't considered, the potential impacts of the various options (including possible unintended consequences), and any data or information that you would like the Agency to consider during the development of the final action. You may find the following suggestions helpful for preparing your comments:

- Explain your views as clearly as possible.
- Describe any assumptions that you used.
- Provide solid technical information and/or data to support your views.
- If you estimate potential burden or costs, explain how you arrived at the estimate.
- Provide specific examples to illustrate your concerns.
- Offer alternative ways to improve the collection activity.
- Make sure to submit your comments by the deadline in this notice.
- At the beginning of your comments (e.g., as part of the ''Subject'' heading), be sure to properly identify the document you are commenting on. You can do this by providing the docket control number assigned to the notice, along with the appropriate EPA and OMB ICR numbers.

IV. What Information Collection Activity or ICR Does This Notice Apply To?

EPA is seeking comments on the following ICR:

Title: Data Call-In for Special Review Chemicals and Registration Review Program.

ICR numbers: EPA ICR No. 0922.06, OMB No. 2070–0057.

ICR status: This ICR is currently scheduled to expire on March 31, 1999, but EPA intends to seek a 90 day extension to ensure that there is adequate time to review comments. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information that is subject to approval under the PRA, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's information collections appear on the collection instruments or instructions, in the **Federal Register** notices for related rulemakings and ICR notices, and, if the collection is contained in a regulation, in a table of OMB approval numbers in 40 CFR part 9.

Abstract: This ICR has been amended to include two information collection programs: the Special Review Program and the Registration Review Program. The Special Review program is part of the existing ICR while the Registration Review Program is being added to the ICR with this renewal. The Registration Review Program was created by the Food Quality Protection Act in 1996. Under the new Registration Review Program, EPA must periodically review all pesticide registrations (see section 3(g) of FIFRA). Therefore, continued registration of all pesticides, regardless of whether a hazard or potential hazard is identified, requires that the Agency obtain additional data, if necessary, and assess all the information to determine whether a registration should continue. Language in FIFRA suggests that EPA review registrations at least once every 15 years. The Agency will establish procedural regulations for scheduling registration review as mandated under the new provisions of FIFRA. EPA believes that there are certain similarities between the information collection in the Registration Review Program and the information collection in the Special Review Program. Since both collections derive their authority and procedures from FIFRA section 3(c)(2)(B), which allows EPA to collect information related to the maintenance of an existing pesticide registration, and both collections are based, in part, on concerns about potential hazard, EPA believes both information collection activities should be covered in the same ICR.

The EPA is responsible for the registration of pesticides as mandated by FIFRA. Currently, as part of the on-going administrative process under section 6 of FIFRA, registrants are required to submit additional information to EPA regarding unreasonable adverse effects on the environment from the use of the pesticide. EPA may also determine that additional information is needed from the registrant to maintain an existing registration. When the Agency identifies a hazard or a potential hazard from the use of a pesticide that was not known at the time of registration, this information collection is used in the Special Review Program to determine whether regulatory actions are needed. This information collection program is separate from the information collection program described in the ICR entitled ''Data Generation for Reregistration.'' The information collection activity described in that ICR results from implementation of the FIFRA Amendments of 1988 (i.e., section 4 of FIFRA) and focuses on the new collection of information necessary to reregister pesticides which were registered before 1984. The reregistration program is expected to be completed by 2006.

Under both the Special Review Program and the Registration Review Program, EPA may require registrants to generate and submit data to the Agency when data is needed to assess whether the existing pesticide registration poses an unreasonable risk to human health or the environment. When the need for additional information/data occurs, the

Agency's Office of Pesticide Programs (OPP) will issue a data call-in (DCI) to obtain the necessary data from the registrant. Agency scientists and analysts integrate the new data received from the registrant with the existing data in EPA's files. All relevant information is reviewed to assess the potential risks and benefits associated with the use of the pesticide. If it is determined that regulatory actions are needed, the Agency will act accordingly.

The types of data that may be requested by this ICR will depend on whether certain information on the pesticide chemical is lacking in the current data base. However, the types of data that can be the subject of a data call-in are categorized into various divisions and listed in 40 CFR part 158. These categories are:

- Product Chemistry
- Residue Chemistry
- Environmental Fate
- Toxicology
- Reentry Protection
- Spray Drift
- Wildlife and Aquatic Organisms
- Plant Protection
- Nontarget Insect
- Product Performance
- Biochemical Pesticides
- Microbial Pesticides

In addition to these types of data, special studies could be required to support continued registration. These special studies would be based on the particular characteristics of a particular pesticide product, and would be made on a case-by-case basis.

OPP will issue a data call-in for a pesticide chemical only after it reviews the available data and determines that the information is not sufficient to satisfy the statutory requirements for continued registration. Even after OPP has completed its review and has determined that additional data must be called-in, registrants are given the opportunity to request a waiver if they believe that OPP can properly evaluate the risks of their pesticide chemicals without additional data. OPP will review each waiver request individually.

V. What are EPA's Burden and Cost Estimates for This ICR?

Under the PRA, ''burden'' means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal Agency. For this collection it includes the time needed to amend this list as appropriate, but use these terms; review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of this estimate, which is only briefly summarized in this notice. The annual public burden for the Special Review Program portion of this information collection is estimated to average 920 hours per response and the annual public burden for the Registration Review Program portion of this information collection is estimated to average 1,063 hours per response. The following is a summary of the total estimates taken from the ICR:

Respondents/affected entities: Pesticide registrants.

Estimated total number of potential respondents: 4 to 60.

Frequency of response: As needed only when specific data is required.

Estimated total/average number of responses for each respondent: 2 to 40.

Estimated total annual burden hours: 7,360 to 63,800.

Estimated total annual burden costs: $616,096 to $5.46 million.

VI. Are There Changes in the Estimates From the Last Approval?

Yes. This ICR is being amended to include the information collection activities attributable to the Registration Review Program. This program was authorized in the 1996 amendments to FIFRA and are being incorporated into this ICR because the information collection activities are similar and both collections derive their authority and procedures from FIFRA section 3(c)(2)(B). EPA is particularly interested in receiving comments on the changes related to this incorporation and the burden estimates for this new program.

VII. What is the Next Step in the Process for This ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.10. EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the person listed in the ''FOR FURTHER INFORMATION CONTACT'' section.

List of Subjects

Environmental protection, Information collection requests.

Dated: March 12, 1999.

Susan H. Wayland,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 99–6784 Filed 3–23–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6314–6]

Clean Air Act Advisory Committee Notice of Meeting

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) established the Clean Air Act Advisory Committee (CAAAC) on November 19,1990, to provide independent advice and counsel to EPA on policy issues associated with implementation of the Clean Air Act of 1990. The Committee advises on economic, environmental, technical scientific, and enforcement policy issues.

OPEN MEETING NOTICE: Pursuant to 5 U.S.C. App. 2 section 10(a)(2), notice is hereby given that the Clean Air Act Advisory Committee will hold its next open meeting on Tuesday, April 27, 1999, from approximately 8:30 a.m. to 3:30 p.m. at the Portland Marriott Downtown, 1401 S.W. Naito Parkway, Portland, Oregon 97201. Seating will be available on a first come, first served basis. The CAAAC's four Subcommittees (The Energy, Clean Air and Climate Change Subcommittee; Linking Transportation, Land Use and Air Quality Concerns Subcommittee; the Permits/NSR/Toxics Integration Subcommittee; and the Economic Incentives and Regulatory Innovations Subcommittee) will hold concurrent meetings on April 26 from approximately 8:30 p.m. to 11:30 p.m. All subcommittee meetings will be held at the Portland Marriott Downtown Hotel, the same location as the full Committee.

INSPECTION OF COMMITTEE DOCUMENTS: The Committee agenda and any documents, prepared for the meeting will be publicly available at the meeting. Thereafter, these documents,

together with CAAAC meeting minutes, will be available by contacting the Office of Air and Radiation Docket and requesting information under docket item A–94–34 (CAAAC). The Docket office can be reached by telephoning 202–260–7548; FAX 202–260–4400.

FOR FURTHER INFORMATION CONTACT: Concerning this meeting of the full CAAAC, please contact Paul Rasmussen, Office of Air and Radiation, US EPA (202) 260–6877, FAX (202) 260–8509 or by mail at US EPA, Office of Air and Radiation (Mail code 6102), 401 M St. S.W. Washington, D.C. 20460. For information on the Subcommittee meetings, please contact the following individuals: (1) Energy, Clean Air and Climate Change—Anna Garcia, 202–564–9492; (2) Permits/NSR/Toxics Integration—Debbie Stackhouse, 919–541–5354; (3) Economic Incentives and Regulatory Innovations—Carey Fitzmaurice, 202–260–7433; and (4) Linking Transportation, Land Use and Air Quality Concerns—Gay MacGregor, 734–668–4438.

Dated: March 17, 1999.

Robert D. Brenner,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 99–7178 Filed 3–23–99; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6314–5]

Environmental Laboratory Advisory Board, Meeting Dates and Agenda

AGENCY: Environmental Protection Agency.

ACTION: Notice of open meetings and request for names.

SUMMARY: The Environmental Protection Agency (EPA) will convene two open meetings of the Environmental Laboratory Advisory Board (ELAB) on April 20, 1999, from 2:00 p.m. to 5:00 p.m. and on April 29, 1999, from 2:00 p.m. to 5:00 p.m. Both meetings will be conducted by teleconference. The public is invited to join Ms. Ramona Trovato in Room 911, West Tower, Waterside Mall, 401 M Street, SW, Washington, DC.

Topics for discussion will include at a minimum a continuing address of Open Forum issues identified at the January 14, 1999, meeting, an update on environmental sample shipment issues, and a review of the status of ELAB recommendations. The public is encouraged to attend. Time will be allotted for public comment.

Also, EPA is interested in assembling a roster of potential names for future ELAB membership. Individuals interested in serving on ELAB should contact Ms. Elizabeth Dutrow. Written comments on the meeting agenda and potential names for future ELAB membership should be directed to Ms. Elizabeth Dutrow; Designated Federal Officer; USEPA; 401 M Street, SW (8724R); Washington, DC 20460. If questions arise, please contact Ms. Dutrow by phone at (202) 564–9061, by facsimile at (202) 565–2441 or by email at dutrow.elizabeth@epa.gov.

Dated: March 15, 1999.

Nancy W. Wentworth,

Director, Quality Assurance Division.

[FR Doc. 99–7180 Filed 3–23–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6314–3]

Science Advisory Board; Notification of Public Advisory Committee Meeting

Pursuant to the Federal Advisory Committee Act, Pub. L. 92–463, notice is hereby given that the Environmental Economics Advisory Committee (EEAC) of the Science Advisory Board (SAB), will meet on April 20, 1999, from 9:00 am to no later than 4:00 pm at The Latham Hotel, 3000 M Street, NW, Washington, DC; telephone (202) 726–5000. All times noted are Eastern Daylight Time. This meeting is open to the public, however, due to limited space, seating will be on a first-come basis. For further information concerning this meeting, please contact the individuals listed below. Documents that are the subject of SAB reviews are normally available from the originating EPA office and are *not* available from the SAB Office.

The primary purpose of the meeting will be to complete the Committee's review of the economic analysis guidelines being developed by the Environmental Protection Agency.

Background Information on Economic Analysis Guidelines

The Environmental Economics Advisory Committee (EEAC or the Committee) has been asked to review the revised Guidelines for Preparing Economic Analyses, a document produced under the direction of the EPA's Regulatory Policy Council. The guidelines are designed to reflect Agency policy on the conduct of the economic analyses called for under applicable legislative and administrative requirements, including, but not limited to Executive Order 12866. These guidelines are intended to provide EPA analysts with a concise but thorough treatment of mainstream thinking on important technical issues so that they can conduct credible and consistent economic analyses. They refer to methods and practices that are commonly accepted in the environmental economics profession; however, they are not intended to preclude new or innovative forms of analysis. The guidelines are shaped by administrative and statutory requirements that contain direct references to the development of economic information during the development of regulations (e.g., evaluations of economic achievability).

This will be the final review meeting on the guidelines. The EEAC was first briefed on the draft guidelines at its August 19, 1998 meeting (see 63 FR 41820, August 5, 1998). Additional discussions occurred on the guidelines at the Committee's November 18, 1998 meeting (see 63 FR 57295, October 27, 1998). At those meetings, the Agency presented information on, and then discussed with EEAC members, each section of the draft guidelines.

Charge to the Committee

The Agency charge asks the EEAC the following questions:

(1) Do the published economic theory and empirical literature support the statements in the guidance document on the treatment of discounting benefits and costs in the following circumstances: (a) Discounting private and public costs for use in an economic impact analysis?; (b) Discounting social benefits and costs in an intragenerational context?; (c) Discounting social benefits and costs in an intergenerational context?; and (d) Discounting social benefit and cost information that is reported in nonmonetary terms?

(2) Do the published economic theory and empirical literature support the statements in the guidance document on quantifying and valuing the social benefits of reducing fatal human health risks?

(3) Do the published economic theory and empirical literature support the statements in the guidance document on the treatment of certainty equivalents in the assessment of social benefits and costs of environmental policies?

(4) Do the published economic theory and empirical literature support the statements in the guidance document on the merits and limitations of different valuation approaches to the measurement of social benefits from

reductions in human morbidity risks and improvements in ecological conditions attributable to environmental policies?

(5) Do the published economic theory and empirical literature support the statements in the guidance document on the relationships and distinctions between the measurement of economic impacts and net social benefits?

(6) Does the guidance document contain an objective and reasonable presentation on the published economic theory, empirical literature, and analytic tools associated with computable general equilibrium (CGE) models, and description of their relevance for economic analyses performed by the EPA?

(7) Does the guidance document contain an objective and reasonable presentation on the measurement of economic impacts, including approaches suitable to estimate impacts of environmental regulations on the private sector, public sector and households? This includes, for example, the measurement of changes in market prices, profits, facility closure and bankruptcy rates, employment, market structure, innovation and economic growth, regional economies, and foreign trade.

(8) Does the guidance document contain a reasonable presentation and set of recommendations on the selection of economic variables and data sources used to measure the equity dimensions identified as potentially relevant to environmental policy analysis?

The Committee will provide a formal response to EPA as a result of the review of these guidelines.

For Further Information—Single copies of the guidelines information provided to the Committee can be obtained by contacting Mr. Brett Snyder, Director, Economy and Environment Division (2172), Office of Policy, US Environmental Protection Agency, 401 M Street SW., Washington DC 20460, telephone (202) 260–5610, fax (202) 260–2685; or via e-mail at: <snyder.brett@epa.gov≤. Anyone wishing to make an oral presentation at the meeting must contact Mr. Thomas Miller, Designated Federal Officer for the Environmental Economics Advisory Committee, *in writing* no later than 4:00 pm, April 12, 1999, at U.S. EPA Science Advisory Board (1400), 401 M Street SW., Washington, DC 20460, fax (202) 260–7118, or via e-mail at: <miller.tom@epa.gov>. The request should identify the name of the individual who will make the presentation and an outline of the issues to be addressed. At least 35 copies of any written comments to the Committee are to be given to Mr. Miller no later than the time of the presentation for distribution to the Committee and the interested public. To discuss technical aspects of the meeting, please contact Mr. Miller by telephone at (202) 260–5886.

Providing Oral or Written Comments at SAB Meetings

The Science Advisory Board expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. In general, each individual or group making an oral presentation will be limited to a total time of ten minutes. For conference call meetings, opportunities for oral comment will be limited to no more than five minutes per speaker and no more than fifteen minutes total. Written comments (at least 35 copies) received in the SAB Staff Office sufficiently prior to a meeting date, may be mailed to the relevant SAB committee or subcommittee prior to its meeting; comments received too close to the meeting date will normally be provided to the committee at its meeting. Written comments may be provided to the relevant committee or subcommittee up until the time of the meeting.

Meeting Access

Individuals requiring special accommodation at this meeting, including wheelchair access, should contact Mr. Miller at least five business days prior to the meeting so that appropriate arrangements can be made.

Dated: March 15, 1999.

Donald G. Barnes,

Staff Director, Science Advisory Board.

[FR Doc. 99–7179 Filed 3–23–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–30470; FRL–6063–8]

Novartis Crop Protection; Applications to Register Pesticide Products

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of applications to register pesticide products containing new active ingredients not included in any previously registered products pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Written comments must be submitted by April 23, 1999.

ADDRESSES: By mail, submit written comments identified by the document control number [OPP–30470] and the file symbols to: Public Information and Records Intregrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Environmental Protection Agency, Rm. 119, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Comments and data may also be submitted electronically to: opp-docket@epamail.epa.gov. Follow the instructions under ''SUPPLEMENTARY INFORMATION.'' No Confidential Business Information (CBI) should be submitted through e-mail.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. The public docket is available for public inspection in Rm. 119 at the Virginia address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Dani Daniel, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 209, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, 703–305–5409, e-mail: daniel.dani@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA received applications as follows to register pesticide products containing active ingredients not included in any previously registered products pursuant to the provision of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

I. Products Containing Active Ingredients Not Included In Any Previously Registered Products

1. File Symbol: 100–OGA. Applicant: Novartis Crop Protection, Inc., P.O. Box 18300, Greensboro, NC 27419. Product Name: Thiamethoxam Technical. Insecticide. Active ingredient: Thiamethoxam, 4*H*-1,3,5-oxadiazin-4-imine, 3-[(2-chloro-5-thiazolyl)methyl]tetrahydro-5-methyl-*N*-nitro- at 98%. Proposed classification/

Use: None. For manufacturing purposes only.

2. File Symbol: 100–OGI. Applicant: Novartis Crop Protection. Product Name: Actara 25 WG. Insecticide. Active ingredient: Thiamethoxam, 4*H*-1,3,5-oxadiazin-4-imine, 3-[(2-chloro-5-thiazolyl)methyl]tetrahydro-5-methyl-*N*-nitro- at 25.0%. Proposed classification/Use: None. For control of certain pests infesting various crops.

3. File Symbol: 100–OGL. Applicant: Novartis Crop Protection. Product Name: Helix Technical. Insecticide/Fungicide. Active ingredients: Thiamethoxam, 4*H*-1,3,5-oxadiazin-4-imine, 3-[(2-chloro-5-thiazolyl)methyl]tetrahydro-5-methyl-*N*-nitro- at 20.70%, difenoconazole at 1.25%, (*R*)-[(2,6-dimethylphenyl)-methoxyacetylamino]-propionic acid methyl ester at 0.38%, and fludioxonil at 0.13%. Proposed classification/Use: None. For use as a seed treatment product to control certain insects and diseases of canola.

4. File Symbol: 100–OGO. Applicant: Novartis Crop Protection. Product Name: Platinum 2SC. Insecticide. Active ingredient: Thiamethoxam, 4*H*-1,3,5-oxadiazin-4-imine, 3-[(2-chloro-5-thiazolyl)methyl]tetrahydro-5-methyl-*N*-nitro- at 21.6%. Proposed classification/Use: None. For control of certain insect pests infesting various crops.

5. File Symbol: 100–OUE. Applicant: Novartis Crop Protection. Product Name: Adage 70WS. Insecticide. Active ingredient: Thiamethoxam, 4*H*-1,3,5-oxadiazin-4-imine, 3-[(2-chloro-5-thiazolyl)methyl]tetrahydro-5-methyl-*N*-nitro- at 70%. Proposed classification/Use: None. For use as a seed treatment product for control of certain insects on barley, cotton, sorghum, and wheat.

6. File Symbol: 100–OUG. Applicant: Novartis Crop Protection. Product Name: Veridian. Insecticide. Active ingredient: Thiamethoxam, 4*H*-1,3,5-oxadiazin-4-imine, 3-[(2-chloro-5-thiazolyl)methyl]tetrahydro-5-methyl-*N*-nitro- at 25.0%. Proposed classification/Use: None. For foliar and systemic control of pests in turfgrass, sod farms, interior plantscapes, and greenhouse ornamentals.

7. File Symbol: 100–OUN. Applicant: Novartis Crop Protection. Product Name: Thiamethoxam Spot On for Dogs. Insecticide. Active ingredient: Thiamethoxam, 4*H*-1,3,5-oxadiazin-4-imine, 3-[(2-chloro-5-thiazolyl)methyl]tetrahydro-5-methyl-*N*-nitro- at 20%. Proposed classification/Use: None. For the prevention and control of flea infestations.

8. File Symbol: 100–OUR. Applicant: Novartis Crop Protection. Product Name: Adage 5FS. Insecticide. Active ingredient: Thiamethoxam, 4*H*-1,3,5-oxadiazin-4-imine, 3-[(2-chloro-5-thiazolyl)methyl]tetrahydro-5-methyl-*N*-nitro- at 47.6%. Proposed classification/Use: None. For use as a seed treatment product for control of certain insects on barley, cotton, sorghum, and wheat.

Notice of approval or denial of an application to register a pesticide product will be announced in the **Federal Register**. The procedure for requesting data will be given in the **Federal Register** if an application is approved.

Comments received within the specified time period will be considered before a final decision is made; comments received after the time specified will be considered only to the extent possible without delaying processing of the application.

II. Public Record and Electronic Submissions

The official record for this notice, as well as the public version, has been established for this notice under docket number [OPP–30470] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official notice record is located at the address in ''ADDRESSES'' at the beginning of this document.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comment and data will also be accepted on disks in Wordperfect 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket number [OPP–30470]. Electronic comments on this notice may be filed online at many Federal Depository Libraries.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Pesticides and pest, Product registration.

Dated: March 9, 1999.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 99–6656 Filed 3–23–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–66264; FRL 6063–7]

Notice of Receipt of Requests to Voluntarily Cancel Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of requests by registrants to voluntarily cancel certain pesticide registrations.

DATES: Unless a request is withdrawn by September 20, 1999, orders will be issued cancelling all of these registrations.

FOR FURTHER INFORMATION CONTACT: By mail: James A. Hollins, Office of Pesticide Programs (7502C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location for commercial courier delivery, telephone number and e-mail address: Rm. 216, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305–5761; e-mail: hollins.james@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, provides that a pesticide registrant may, at any time, request that any of its pesticide registrations be cancelled. The Act further provides that EPA must publish a notice of receipt of any such request in the **Federal Register** before acting on the request.

II. Intent to Cancel

This Notice announces receipt by the Agency of requests to cancel some 43 pesticide products registered under section 3 or 24(c) of FIFRA. These registrations are listed in sequence by registration number (or company number and 24(c) number) in the following Table 1.

TABLE 1 — REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION

Registration No.	Product Name	Chemical Name
000070–00259	Rigo Streptomycin Sulfate	Streptomycin sulfate
000239–02575	Isotox Insect Killer Formula III	1,1-Bis(chlorophenyl)-2,2,2-trichloroethanol *O,S*-Dimethyl acetylphosphoramidothioate
000279 AZ–93–0017	Talstar Granular	(2-Methyl(1,1'-biphenyl)-3-yl)methyl 3-(2-chloro-3,3,3-trifluoro-1-
000279 AZ–93–0018	Talstar 10WP Insecticide/miticide	(2-Methyl(1,1'-biphenyl)-3-yl)methyl 3-(2-chloro-3,3,3-trifluoro-1-
000432–00746	Gold Crest Vengeance Rodenticide	*N*-Methyl-2,4-dinitro-*N*-(2,4,6-tribromophenyl)-6-(trifluoromethyl)benzenamine
000432–00748	Gold Crest Vengeance Rodenticide Small Bait Packs	*N*-Methyl-2,4-dinitro-*N*-(2,4,6-tribromophenyl)-6-(trifluoromethyl)benzenamine
000572–00237	Rockland Super Dacthal 686	Dimethyl tetrachloroterephthalate
000655–00791	Prentox Ban Bug Bait	Dimethyl (2,2,2-trichloro-1-hydroxyethyl)phosphonate
000707 AZ–93–0019	Goal 1.6E Herbicide	2-Chloro-1-(3-ethoxy-4-nitrophenoxy)-4-(trifluoromethyl)benzene
000707 NC–83–0023	Goal 1.6E Herbicide	2-Chloro-1-(3-ethoxy-4-nitrophenoxy)-4-(trifluoromethyl)benzene
000707 NC–88–0004	Goal 1.6E Herbicide	2-Chloro-1-(3-ethoxy-4-nitrophenoxy)-4-(trifluoromethyl)benzene
000707 NC–91–0003	Goal 1.6E Herbicide	2-Chloro-1-(3-ethoxy-4-nitrophenoxy)-4-(trifluoromethyl)benzene
000802–00571	Lily/Miller Casoron Granules 1.5%	2,6-Dichlorobenzonitrile
000802–00576	Lilly/Miller Ultragreen Crabgrass Control & Lawn Food	Dimethyl tetrachloroterephthalate
001270–00107	ZEP Insect Repellent	*N,N*-Diethyl-meta-toluamide and other isomers
002724–00279	Zoecon RF–156 Collar for Dogs	*N*-(Mercaptomethyl)phthalimide *S*-(*O,O*-dimethyl phosphorodithioate)
003125–00330	Oftanol 5% Granular Insecticide	1-Methylethyl 2-((ethoxy((1-methylethyl)amino)phosphinothioyl)oxy)benzoate
003125–00331	Oftanol 1.5% Granular	1-Methylethyl 2-((ethoxy((1-methylethyl)amino)phosphinothioyl)oxy)benzoate
003125–00350	Lawn Food and Insecticide	1-Methylethyl 2-((ethoxy((1-methylethyl)amino)phosphinothioyl)oxy)benzoate
003125–00435	Oftanol 5% Granular Turf and Ornamental Insecticide	1-Methylethyl 2-((ethoxy((1-methylethyl)amino)phosphinothioyl)oxy)benzoate
005481–00189	Alco Slug'm	4-(Methylthio)-3,5-xylyl methylcarbamate
005481–00195	Metaldehyde Methiocarb Granules 2–1	2,4,6,8-Tetramethyl-1,3,5,7-tetroxocane 4-(Methylthio)-3,5-xylyl methylcarbamate
005481–00332	Metaldehyde Methiocarb Granules 2–1 for Home Owner Use	2,4,6,8-Tetramethyl-1,3,5,7-tetroxocane 4-(Methylthio)-3,5-xylyl methylcarbamate
005481–00333	Slug' M for Homeowners Use	4-(Methylthio)-3,5-xylyl methylcarbamate
005815–00035	Triple X Garden Weed Preventer	Dimethyl tetrachloroterephthalate
007401–00342	Ferti-Lome Bug Bait	4-(Methylthio)-3,5-xylyl methylcarbamate
009198–00024	Tee Time Fertilizer 20–4–10 with Dacthal	Dimethyl tetrachloroterephthalate
009779–00350	Iprodione R	3-(3,5-Dichlorophenyl)-*N*-(1-methylethyl)-2,4-dioxo-1-imidazolidinecarboxamide
010163–00096	Gowan Dicofol 1.6 EC	1,1-Bis(chlorophenyl)-2,2,2-trichloroethanol
010163 AZ–94–0001	Prefar 4–E Herbicide	*S*-(*O,O*-Diisopropyl phosphorodithioate) ester of *N*-(2-mercaptoethyl)benzenesulfonamide
010163 WA–95–0011	Imidan 70–WP Agricultural Insecticide	*N*-(Mercaptomethyl)phthalimide *S*-(*O,O*-dimethyl phosphorodithioate)
010163 WA–95–0012	Imidan 70–WSB	*N*-(Mercaptomethyl)phthalimide *S*-(*O,O*-dimethyl phosphorodithioate)
010163 WA–95–0013	Imidan 70–WP Agricultural Insecticide	*N*-(Mercaptomethyl)phthalimide *S*-(*O,O*-dimethyl phosphorodithioate)
010163 WA–95–0014	Imidan 70–WSB	*N*-(Mercaptomethyl)phthalimide *S*-(*O,O*-dimethyl phosphorodithioate)
010163 WA–95–0018	Gowan Cryolite Bait	Cryolite
010182 OR–95–0012	Warrior Insecticide	(R+S)-alpha-Cyano-3-phenoxybenzyl (1S+1R)-*cis*-3-(*Z*-2-chloro-3,3,3-
032802–00017	Dacthal 5–G Plus	Dimethyl tetrachloroterephthalate
032802–00027	Dacthal 5–G Weed Preventer	Dimethyl tetrachloroterephthalate
059639 AZ–92–0009	Volck Supreme Spray	Aliphatic petroleum hydrocarbons
059639 AZ–98–0003	Dibrom 8 Emulsive	1,2-Dibromo-2,2-dichloroethyl dimethyl phosphate

TABLE 1 — REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration No.	Product Name	Chemical Name
060224 FL–88–0001	Malathion ULY	*O,O*-Dimethyl phosphorodithioate of diethyl mercaptosuccinate
062719 WA–94–0003	Lorsban 4E–HF	*O,O*-Diethyl *O*-(3,5,6-trichloro-2-pyridyl) phosphorothioate
067801–00002	Paraquat Concentrate	1,1'-Dimethyl-4,4'-bipyridinium dichloride

Unless a request is withdrawn by the registrant within 180 days of publication of this notice, orders will be issued cancelling all of these registrations. Users of these pesticides or anyone else desiring the retention of a registration should contact the applicable registrant directly during this 180–day period. The following Table 2 includes the names and addresses of record for all registrants of the products in Table 1, in sequence by EPA Company Number.

TABLE 2 — REGISTRANTS REQUESTING VOLUNTARY CANCELLATION

EPA Company No.	Company Name and Address
000070	Sureco Inc., An Indirect Subsidiary of Verdant Brands, 9555 James Ave., South, Suite 200, Bloomington, MN 55431.
000239	The Solaris Group of Monsanto Co., Box 5006, San Ramon, CA 94583.
000279	FMC Corp., Agricultural Products Group, 1735 Market St., Philadelphia, PA 19103.
000432	Agrevo Environmental Health, 95 Chestnut Ridge Rd., Montvale, NJ 07645.
000572	Rockland Corp., 686 Passaic Ave., Box 809, West Caldwell, NJ 07007.
000655	Prentiss Inc., C.B. 2000, Floral Park, NY 11001.
000707	Rohm & Haas Co., Attn: Robert H. Larkin, 100 Independence Mall W., Philadelphia, PA 19106.
000802	Schroeder Law offices, Agent For: The Garden Grow Co., 3355 NE Davis, Portland, OR 97232.
001270	ZEP Mfg. Co., Box 2015, Atlanta, GA 30301.
002724	Wellmark International, 1000 Tower Lane, Suite 245, Bensenville, IL 60106.
003125	Bayer Corp., Agriculture Division, 8400 Hawthorn Rd., Box 4913, Kansas City, MO 64120.
005481	AMVAC Chemical Corp., Attn: W. F. Millar, 2110 Davie Ave., Commerce, CA 90040.
005815	The Andersons, Dba/ Wegro, 1200 Dussel Drive, Box 119, Maumee, OH 43537.
007401	Voluntary Purchasing Group Inc., Box 460, Bonham, TX 75418.
009198	The Andersons Lawn Fertilizer Division, Dba/ Free Flow Fertilizer, Box 119, Maumee, OH 43537.
009779	Terra International, Inc., 600 Fourth St., Sioux City, IA 51102.
010163	Gowan Co., Box 5569, Yuma, AZ 85366.
010182	Zeneca Ag Products, Box 15458, Wilmington, DE 19850.
032802	Howard Johnson's Enterprises Inc., 700 W. Virginia St., Ste 222, Milwaukee, WI 53204.
059639	Valent U.S.A. Corp., 1333 N. California Blvd, Ste 600, Walnut Creek, CA 94596.
060224	Director, Fl Dept of Agric & Cons Svcs, Div of Plant Industry, 1911 SW 34th St., Gainesville, FL 32608.
062719	Dow Agrosciences LLC, 9330 Zionsville Rd., 308/3E, Indianapolis, IN 46268.
067801	Crystal Chemical Inter-America, 6262 Bird Rd., Suite 2E, Miami, FL 33155.

III. Procedures for Withdrawal of Request

Registrants who choose to withdraw a request for cancellation must submit such withdrawal in writing to James A. Hollins, at the address given above, postmarked before September 20, 1999. This written withdrawal of the request for cancellation will apply only to the applicable 6(f)(1) request listed in this notice. If the product(s) have been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling. The withdrawal request must also include a commitment to pay any reregistration fees due, and to fulfill any applicable unsatisfied data requirements.

IV. Provisions for Disposition of Existing Stocks

The effective date of cancellation will be the date of the cancellation order. The orders effecting these requested cancellations will generally permit a registrant to sell or distribute existing stocks for 1 year after the date the cancellation request was received. This policy is in accordance with the Agency's statement of policy as prescribed in **Federal Register** (56 FR 29362) June 26, 1991; (FRL 3846–4). Exceptions to this general rule will be made if a product poses a risk concern, or is in noncompliance with reregistration requirements, or is subject to a data call-in. In all cases, product-specific disposition dates will be given in the cancellation orders.

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which have been packaged, labeled, and released for shipment prior to the effective date of the cancellation action. Unless the provisions of an earlier order apply, existing stocks already in the hands of dealers or users can be distributed, sold or used legally until they are exhausted, provided that such further sale and use comply with the EPA-approved label and labeling of the

affected product(s). Exceptions to these general rules will be made in specific cases when more stringent restrictions on sale, distribution, or use of the products or their ingredients have already been imposed, as in Special Review actions, or where the Agency has identified significant potential risk concerns associated with a particular chemical.

List of Subjects

Environmental protection, Pesticides and pests, Product registrations.

Dated: February 19, 1999

Faye M. Howell,

Acting Director, Information Resources and Services Division, Office of Pesticide Programs.

[FR Doc. 99–7081 Filed 3–23–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–30452A; FRL–6067–6]

Zeneca Ag Products; Approval of Pesticide Product Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces Agency approval of applications to conditionally register the pesticide products Tralkoxydim Technical Wet Paste, Achieve 40DG Herbicide, and Achieve 80DG Herbicide containing a new active ingredient not included in any previously registered products pursuant to the provisions of section 3(c)(7)(C) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

FOR FURTHER INFORMATION CONTACT: By mail: James Tompkins, Product Manager (PM-25), Registration Division (7505C), Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 239, CM #2, Environmental Protection Agency, 1921 Jefferson Davis Hwy, Arlington, VA 22202, 703–305–5697; e-mail: tompkins.jim@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

Electronic Availability: Electronic copies of this document and the Fact Sheet are available from the EPA home page at the **Federal Register** Environmental Sub-Set entry for this document under ''Laws and Regulations'' (http://www.epa.gov/fedrgstr/).

EPA issued a notice, published the **Federal Register** of April 29, 1998 (63 FR 23438)(FRL–5783–2), which announced that Zeneca Ag Products, 1800 Concord Pike, P.O. Box 15458, Wilmington, DE 19850–5458, had submitted applications to conditionally register the herbicide products Tralkoxydim Technical Wet Paste, Achieve 40DG Herbicide, and Achieve 80DG Herbicide (EPA File Symbols 10182–UEL, 10182–UEA, and 10182–UET) containing the active ingredient tralkoxydim 2-cyclohexen-1-one, 2-[1-ethoxyimino) propyl]-3-hydroxy-5-(2,4,6-trimethylphenyl)-(9Cl) at 81%, 40%, and 80% respectively, an active ingredient not included in any previously registered pesticide products.

The applications were approved for general use on December 4, 1998, for one technical and two end-use products listed below:

1. Tralkoxydim Technical, Wet Paste for formulating use only (EPA Registration Number 10182–425).
2. Achieve 40DG Herbicide for selective control of wild oats, green and yellow foxtail, annual ryegrass, and Persian Darnel on wheat and barley (EPA Registration Number 10182–426).
3. Achieve 80DG Herbicide for selective control of wild oats, green and yellow foxtail, annual ryegrass, and Persian Darnel on wheat and barley (EPA Registration Number 10182–427).

A conditional registration may be granted under section 3(c)(7)(C) of FIFRA for a new active ingredient where certain data are lacking, on condition that such data are received by the end of the conditional registration period and do not meet or exceed the risk criteria set forth in 40 CFR 154.7; that use of the pesticide during the conditional registration period will not cause unreasonable adverse effects; and that use of the pesticide is in the public interest. The Agency has considered the available data on the risks associated with the proposed use of tralkoxydim, and information on social, economic, and environmental benefits to be derived from such use. Specifically, the Agency has considered the nature and its pattern of use, application methods and rates, and level and extent of potential exposure. Based on these reviews, the Agency was able to make basic health and safety determinations which show that use of tralkoxydim during the period of conditional registration will not cause any unreasonable adverse effect on the environment, and that use of the pesticide is, in the public interest.

Consistent with section 3(c)(7)(C), the Agency has determined that these conditional registrations are in the public interest. Use of the pesticides are of significance to the user community, and appropriate labeling, use directions, and other measures have been taken to ensure that use of the pesticides will not result in unreasonable adverse effects to man and the environment.

All required data studies must be submitted to the Agency by February 28, 2003. If these conditions are not complied with the registrations will be subject to cancellation in accordance with FIFRA section 6(e).

More detailed information on these conditional registrations is contained in an EPA Pesticide Fact Sheet on tralkoxydim.

A paper copy of this fact sheet, which provides a summary description of the chemical, use patterns and formulations, science findings, and the Agency's regulatory position and rationale, may be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161.

In accordance with section 3(c)(2) of FIFRA, a copy of the approved label, the list of data references, the data and other scientific information used to support registration, except for material specifically protected by section 10 of FIFRA, are available for public inspection in the Public Information and Records Intregrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 119, CM #2, Arlington, VA 22202 (703–305–5805). Requests for data must be made in accordance with the provisions of the Freedom of Information Act and must be addressed to the Freedom of Information Office (A-101), 401 M St., SW., Washington, DC 20460. Such requests should: (1) Identify the product name and registration number and (2) specify the data or information desired.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Pesticides and pests, Product registration.

Dated: March 9, 1999.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 99–6655 Filed 3–23–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–50849; FRL–6046–2]

Issuance of an Experimental Use Permit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted an experimental use permit to the following applicant. The permit is in accordance with, and subject to, the provisions of 40 CFR part l72, which defines EPA procedures with respect to the use of pesticides for experimental use purposes.

FOR FURTHER INFORMATION CONTACT: By mail: Edward Allen, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: 1921 Jefferson Davis Highway, Rm. 902W16, CM #2, Arlington, VA, 703–308–8699, e-mail: allen.edward@epa.gov.

SUPPLEMENTARY INFORMATION: EPA has issued the following experimental use permit:

38581–EUP–1. Issuance. University of Rhode Island, Plant Sciences Department, Kingston, RI 02881. This experimental use permit allows the use of 1.5 pounds of the biological acaricide metarhizium anisopliae, strain ECS 1 on deer to evaluate the control of ticks. A total of 3,500 acres is involved. The program is authorized only in the State of Rhode Island. The experimental use permit is effective from November 2, 1998 to November 2, 1999.

Persons wishing to review this experimental use permit are referred to the designated contact person. Inquires concerning this permit should be directed to the person cited above. It is suggested that interested persons call before visiting the EPA office, so that the appropriate file may be made available for inspection purposes from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Experimental use permits.

Dated: March 11, 1999.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 99–7174 Filed 3–23–99; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Submitted to OMB for Review and Approval

March 17, 1999.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before April 23, 1999. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW, Washington, DC 20554 or via the Internet to jboley@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judy Boley at 202–418–0214 or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0404.

Title: Application for an FM Translator or FM Booster Station.

Form Number: FCC Form 350.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit, not-for-profit institutions, state, local or tribal government.

Number of Respondents: 560.

Estimated Time Per Response: 1.0 hours per response.

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 560 hours.

Total Annual Cost: N/A.

Needs and Uses: On October 22, 1998, the Commission adopted a Report and Order in MM Docket Nos. 98–43 and 94–149, which among other things, substantially revised the FCC Form 350 to facilitate electronic filing by replacing narrative exhibits with the use of certifications and an engineering technical box. The Commission also deleted and narrowed overly burdensome questions. The FCC 350 will be supplemented with detailed instructions to explain processing standards and rule interpretations to help ensure that applicants certify accurately. These changes will reduce applicant filing burdens in the preparation and submission of exhibits in support of applications. In addition, these changes will streamline the Commission's processing of FCC 350 applications. The Commission has also adopted a formal program of pre- and post-application grant random audits to preserve the integrity of our streamlined application process.

Licensees and permittees of FM Translator or FM Booster stations are required to file FCC Form 350 to obtain a new or modified station license. The data will be used by FCC staff to confirm that the station has been built to terms specified in the outstanding construction permit. Data is then extracted from the FCC 350 for inclusion in the subsequent license to operate the station.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–7170 Filed 3–23–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 96–98; FCC 99–38]

Inter-Carrier Compensation for ISP-bound Traffic.

AGENCY: Federal Communications Commission.

ACTION: Clarification.

SUMMARY: On February 26, 1999, the Commission released a document in CC Docket No. 96–98 concluding that dial-up traffic bound for Internet service providers is largely interstate and thus subject to federal jurisdiction. The document also makes clear that parties are bound by their existing interconnection agreements, as construed by state commissions. Parties may have agreed that ISP-bound traffic should be subject to reciprocal compensation, or a state commission, in the exercise of its statutory authority to arbitrate interconnection disputes, may have imposed reciprocal compensation obligations for this traffic. In either case, parties are bound by their contracts.

FOR FURTHER INFORMATION CONTACT: Tamara Preiss, Attorney, Common Carrier Bureau, Competitive Pricing Division, (202) 418–1520.

SUPPLEMENTARY INFORMATION: This summarizes the Commission's Declaratory Ruling in CC Docket No. 96–98, Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, FCC 99–38, adopted February 25, 1999, and released February 26, 1999. The file in its entirety is available for inspection and copying during the weekday hours of 9:00 a.m. to 4:30 p.m. in the Commission's Reference Center, room 239, 1919 M St., N.W., Washington D.C., or copies may be purchased from the Commission's duplicating contractor, ITS, Inc. 1231 20th St., N.W., Washington, D.C. 20036, phone (202) 857–3800.

Analysis of Proceeding

I. Introduction

1. The Commission and the Common Carrier Bureau (Bureau) have received a number of requests to clarify whether a local exchange carrier (LEC) is entitled to receive reciprocal compensation for traffic that it delivers to an information service provider, particularly an Internet service provider (ISP). Generally, competitive LECs (CLECs) contend that this is local traffic subject to the reciprocal compensation provisions of Section 251(b)(5) of the Communications Act of 1934 (Act), as amended by the Telecommunications Act of 1996. Telecommunications Act of 1996, Public Law 104–104, 110 Stat. 56, *codified at* 47 U.S.C. 151 *et seq.* (1996 Act). Incumbent LECs contend that this is interstate traffic beyond the scope of Section 251(b)(5). After reviewing the record developed in response to these requests, the Commission concludes that ISP-bound traffic is jurisdictionally mixed and appears to be largely interstate. This conclusion, however, does not in itself determine whether reciprocal compensation is due in any particular instance. As explained, parties may have agreed to reciprocal compensation for ISP-bound traffic, or a state commission, in the exercise of its authority to arbitrate interconnection disputes under Section 252 of the Act, may have imposed reciprocal compensation obligations for this traffic. In the absence, to date, of a federal rule regarding the appropriate inter-carrier compensation for this traffic, the Commission therefore concludes that parties should be bound by their existing interconnection agreements, as interpreted by state commissions.

II. Background

2. Identifying the jurisdictional nature and regulatory treatment of ISP-bound communications requires us to determine how Internet traffic fits within the Commission's existing regulatory framework.

A. The Internet and ISPs

3. The Internet is an international network of interconnected computers enabling millions of people to communicate with one another and to access vast amounts of information from around the world. The Internet functions by splitting up information into ''small chunks or 'packets' that are individually routed . . . to their destination.'' Federal-State Joint Board on Universal Service, CC Docket No. 96–45, Report to Congress, 13 FCC Rcd 11501 (1998) (*Universal Service Report to Congress*). With packet-switching, ''even two packets from the same message may travel over different physical paths through the network . . . which enables users to invoke multiple Internet services simultaneously, and to access information with no knowledge of the physical location of the service where the information resides.'' *Id.*

4. An ISP is an entity that provides its customers the ability to obtain on-line information through the Internet. ISPs purchase analog and digital lines from local exchange carriers to connect to their dial-in subscribers. Under one typical arrangement, an ISP customer dials a seven-digit number to reach the ISP server in the same local calling area. The ISP, in turn, combines ''computer processing, information storage, protocol conversion, and routing with transmission to enable users to access Internet content and services.'' *Id.* Under this arrangement, the end user generally pays the LEC a flat monthly fee for use of the local exchange network and generally pays the ISP a flat, monthly fee for Internet access. The ISP typically purchases business lines from a LEC, for which it pays a flat monthly fee that allows unlimited incoming calls.

5. Although the Commission has recognized that enhanced service providers (ESPs), including ISPs, use interstate access services, since 1983 it has exempted ESPs from the payment of certain interstate access charges. Pursuant to this exemption, ESPs are treated as end users for purposes of assessing access charges, and the Commission permits ESPs to purchase their links to the public switched telephone network (PSTN) through intrastate business tariffs rather than through interstate access tariffs. Thus, ESPs generally pay local business rates and interstate subscriber line charges for their switched access connections to local exchange company central offices. In addition, incumbent LEC expenses and revenue associated with ISP-bound traffic traditionally have been characterized as intrastate for separations purposes. ESPs also pay the special access surcharge when purchasing special access lines under the same conditions as those applicable to end users. In the *Access Charge Reform Order*, the Commission decided to maintain the existing pricing structure pursuant to which ESPs are treated as end users for the purpose of applying access charges. Access Charge Reform, CC Docket No. 96–262, First Report and Order, 62 FR 31868 (June 11, 1997) (*Access Charge Reform Order*). Thus, the Commission continues to discharge its interstate regulatory obligations by treating ISP-bound traffic as though it were local.

6. The Internet provides citizens of the United States with the ability to communicate across state and national borders in ways undreamed of only a few years ago. The Internet also is developing into a powerful instrumentality of interstate commerce. In 1997, the Commission decided that retaining the ESP exemption would avoid disrupting the still-evolving information services industry and advance the goals of the 1996 Act to ''preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services.'' *Access Charge Reform Order.*

This Congressional mandate underscores the obligation and commitment of this Commission to foster and preserve the dynamic market for Internet-related services. The Commission emphasizes the strong federal interest in ensuring that regulation does nothing to impede the growth of the Internet—which has flourished to date under the Commission's ''hands off'' regulatory approach—or the development of competition. The Commission is mindful of the need to address the jurisdictional question at issue here, and the effect the jurisdictional determination may have on inter-carrier compensation for ISP-bound traffic, in a manner that promotes efficient entry by providers of both local telephone and Internet access services, and that, by the same token, does not encourage inefficient entry.

B. Incumbent LEC and CLEC Delivery of ISP-Bound Traffic

7. Section 251(b)(5) of the Act requires all LECs ''to establish reciprocal compensation arrangements for the transport and termination of telecommunications.'' 47 U.S.C. 251(b)(5). In the *Local Competition Order*, this Commission construed this provision to apply only to the transport and termination of ''local telecommunications traffic.'' *See* 47 CFR 51.701; Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, First Report and Order, CC Docket Nos. 96–98, 95–185, 61 FR 45476 (August 29, 1996) (*Local Competition Order*). In order to determine what compensation is due when two carriers collaborate to deliver a call to an ISP, the Commission must determine as a threshold matter whether this is interstate or intrastate traffic. In general, an originating LEC end user's call to an ISP served by another LEC is carried (1) by the originating LEC from the end user to the point of interconnection (POI) with the LEC serving the ISP; (2) by the LEC serving the ISP from the LEC-LEC POI to the ISP's local server; and (3) from the ISP's local server to a computer that the originating LEC end user desires to reach via the Internet. If these calls terminate at the ISP's local server (where another (packet-switched) ''call'' begins), as many CLECs contend, then they are intrastate calls, and LECs serving ISPs are entitled to reciprocal compensation for the ''transport and termination'' of this traffic. If, however, these calls do not terminate locally, incumbent LECs argue, then LECs serving ISPs are not entitled to reciprocal compensation under section 251(b)(5).

8. CLECs argue that, because Section 251(b)(5) of the Act refers to the duty to establish reciprocal compensation arrangements for the ''transport and termination of *telecommunications*,'' a transmission ''terminates'' for reciprocal compensation purposes when it ceases to be ''telecommunications.'' ''Telecommunications'' is defined in the Act as ''the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.'' 47 U.S.C. 153(43). CLECs contend that, under this definition, Internet service is not ''telecommunications'' and that the ''telecommunications'' component of Internet traffic terminates at the ISP's local server. In addition, CLECs and ISPs argue that, given that ESPs are exempt from paying certain interstate access charges and that, as a result, the PSTN links serving ESPs are treated as intrastate under the separations regime, the services that CLECs provide for ISPs must be deemed local. Incumbent LECs contend, however, that the ''telecommunications'' terminate not at the ISP's local server, but at the Internet site accessed by the end user, in which case these are interstate calls for which, they argue, no reciprocal compensation is due.

III. Discussion

9. The Commission has no rule governing inter-carrier compensation for ISP-bound traffic. Generally speaking, when a call is completed by two (or more) interconnecting carriers, the carriers are compensated for carrying that traffic through either reciprocal compensation or access charges. When two carriers jointly provide interstate access (*e.g.*, by delivering a call to an interexchange carrier (IXC)), the carriers will share access revenues received from the interstate service provider. Conversely, when two carriers collaborate to complete a local call, the originating carrier is compensated by its end user and the terminating carrier is entitled to reciprocal compensation pursuant to Section 251(b)(5) of the Act. Until now, however, it has been unclear whether or how the access charge regime or reciprocal compensation applies when two interconnecting carriers deliver traffic to an ISP. As explained, under the ESP exemption, LECs may not impose access charges on ISPs; therefore, there are no access revenues for interconnecting carriers to share. Moreover, the Commission has directed states to treat ISP traffic as if it were local, by permitting ISPs to purchase their PSTN links through local business tariffs. As a result, and because the Commission had not addressed inter-carrier compensation under these circumstances, parties negotiating interconnection agreements and the state commissions charged with interpreting them were left to determine as a matter of first impression how interconnecting carriers should be compensated for delivering traffic to ISPs, leading to the present dispute.

A. Jurisdictional Nature of Incumbent LEC and CLEC Delivery of ISP-Bound Traffic

10. As many incumbent LECs properly note, the Commission traditionally has determined the jurisdictional nature of communications by the end points of the communication and consistently has rejected attempts to divide communications at any intermediate points of switching or exchanges between carriers. In *BellSouth MemoryCall*, for example, the Commission considered the jurisdictional nature of traffic that consisted of an incoming interstate transmission (call) to the switch serving a voice mail subscriber and an intrastate transmission of that message from that switch to the voice mail apparatus. Petition for Emergency Relief and Declaratory Ruling Filed by BellSouth Corporation, 7 FCC Rcd 1619 (1992) (*BellSouth MemoryCall*). The Commission determined that the entire transmission constituted one interstate call, because ''there is a continuous path of communications across state lines between the caller and the voice mail service.'' *Id.* The Commission's jurisdictional determination did not turn on the common carrier status of either the provider or the services at issue; *BellSouth MemoryCall* is not, therefore, distinguishable on the grounds that ISPs are not common carriers.

11. Similarly, in *Teleconnect*, the Bureau examined whether a call using Teleconnect's ''All-Call America'' (ACA) service, a nationwide 800 travel service that uses AT&T's Megacom 800 service, is a single, end-to-end call. *Teleconnect Co.* v. *Bell Telephone Co. of Penn.*, E–88–83, 10 FCC Rcd 1626 (1995) (*Teleconnect*). Generally, an ACA call is initiated by an end user from a common line open end; the call is routed through a LEC to an AT&T Megacom line, and is then transferred from AT&T to Teleconnect by another LEC. At that point, Teleconnect routes the call through the LEC to the end user being called. The Bureau rejected the argument that the (ACA) 800 call used

to connect to an interexchange carrier's (IXC) switch was a separate and distinct call from the call that was placed from that switch. The Commission affirmed, noting that ''both court and Commission decisions have considered the end-to-end nature of the communications more significant than the facilities used to complete such communications. According to these precedents, the Commission regulates an interstate wire communications under the Communications Act from its inception to its completion.'' *Id.* The Commission concluded that ''an interstate communication does not end at an intermediate switch. . . . The interstate communication itself extends from the inception of a call to its completion, regardless of any intermediate facilities.'' *Id.* In addition, in *Southwestern Bell Telephone Company,* the Commission rejected the argument that ''a credit card call should be treated for jurisdictional purposes as two calls: one from the card user to the interexchange carrier's switch, and another from the switch to the called party'' and concluded that ''switching at the credit card switch is an intermediate step in a single end-to-end communication.'' In the Matter of Southwestern Bell Tel. Co., CC Docket No. 88–180, Order Designating Issues for Investigation, 3 FCC Rcd 2339 (1988) (*Southwestern Bell Tel. Co.*).

12. Consistent with these precedents, the Commission concludes, as explained, that the communications at issue here do not terminate at the ISP's local server, as CLECs and ISPs contend, but continue to the ultimate destination or destinations, specifically at a Internet website that is often located in another state. The fact that the facilities and apparatus used to deliver traffic to the ISP's local servers may be located within a single state does not affect the Commission's jurisdiction. As the Commission stated in *BellSouth MemoryCall,* ''this Commission has jurisdiction over, and regulates charges for, the local network when it is used in conjunction with the origination and termination of interstate calls.'' *BellSouth MemoryCall.* Indeed, in the vast majority of cases, the facilities that incumbent LECs use to provide interstate access are located entirely within one state. Thus, the Commission rejects MCI WorldCom's assertion that the LEC facilities used to deliver traffic to ISPs must cross state boundaries for such traffic to be classified as interstate.

13. The Commission disagrees with those commenters that argue that, for jurisdictional purposes, ISP-bound traffic must be separated into two components: an intrastate telecommunications service, provided in this instance by one or more LECs, and an interstate information service, provided by the ISP. As discussed, the Commission analyzes the totality of the communication when determining the jurisdictional nature of a communication. The Commission previously has distinguished between the ''telecommunications services component'' and the ''information services component'' of end-to-end Internet access for purposes of determining which entities are required to contribute to universal service. Federal-State Joint Board on Universal Service, Report and Order, 62 FR 32862 (June 17, 1997) (*Universal Service Order*). Although the Commission concluded that ISPs do not appear to offer ''telecommunications service'' and thus are not ''telecommunications carriers'' that must contribute to the Universal Service Fund, it has never found that ''telecommunications'' end where ''enhanced'' service begins. To the contrary, in the context of open network architecture (ONA) elements, for example, the Commission stated that ''an otherwise interstate basic service . . . does not lose its character as such simply because it is being used as a component in the provision of a[n enhanced] service that is not subject to Title II.'' Filing and Review of Open Network Architecture Plans, 54 FR 3453 (January 24, 1989). The 1996 Act is consistent with this approach. For example, as amended by the 1996 Act, Section 3(20) of the Communications Act defines ''information services'' as ''the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information *via telecommunications.*'' 47 U.S.C. 153(20) (emphasis added). This definition recognizes the inseparability, for purposes of jurisdictional analysis, of the information service and the underlying telecommunications. Although it concluded in the *Universal Service Report to Congress* that ISPs do not provide ''telecommunications'' as defined in the 1996 Act, the Commission reiterated the traditional analysis that ESPs enhance the underlying telecommunications service. *Universal Service Report to Congress.* Thus, the Commission analyzes ISP traffic for jurisdictional purposes as a continuous transmission from the end user to a distant Internet site.

14. Some CLECs note that the language of section 252(d)(2) provides for the recovery of the costs of transporting and terminating a ''call.'' Although the 1996 Act does not define the term ''call,'' these CLECs argue that it is used in the 1996 Act in a manner that implies a circuit-switched connection between two telephone numbers. For example, Adelphia contends that a ''call'' takes place when two stations on the PSTN are connected to each other. A call ''terminates,'' according to Adelphia, when one station on the PSTN dials another station, and the second station answers. Under this view, the ''call'' associated with Internet traffic ends at the ISP's local premises.

15. The Commission finds that this argument is inconsistent with Commission precedent holding that communications should be analyzed on an end-to-end basis, rather than by breaking the transmission into component parts. The examples cited by CLECs to support the argument that calls end at the called number are not dispositive. The statutory sections upon which they rely were written to apply to specific situations, all of which, as far as the Commission can tell, involve traditional telephony connections between two called numbers, as opposed to the novel circumstance of Internet traffic.

16. Nor is the Commission persuaded by CLEC arguments that, because the Commission has treated ISPs as end users for purposes of the ESP exemption, an Internet call must terminate at the ISP's point of presence. The Commission traditionally has characterized the link from an end user to an ESP as an interstate access service. In the *MTS/WATS Market Structure Order,* for instance, the Commission concluded that ESPs are ''among a variety of users of access service'' in that they ''obtain local exchange services or facilities which are used, in part or in whole, for the purpose of completing interstate calls which transit its location and, commonly, another location in the exchange area.'' MTS and WATS Market Structure, CC Docket No. 78–72, Memorandum Opinion and Order, 48 FR 10319 (March 11, 1983) (*MTS/WATS Market Structure Order*). The fact that ESPs are exempt from access charges and purchase their PSTN links through local tariffs does not transform the nature of traffic routed to ESPs. That the Commission *exempted* ESPs from access charges indicates its understanding that ESPs in fact use interstate access service; otherwise, the exemption would not be necessary. The Commission emphasizes that its decision to treat ISPs as end users for access charge purposes and, hence, to treat ISP-bound traffic as local, does not affect the Commission's ability to exercise jurisdiction over such traffic.

17, CLECs also argue that the traffic they deliver to ISPs must be deemed either ''telephone exchange service'' or ''exchange access.'' They contend that ISP traffic cannot be ''exchange access,'' because neither LECs nor CLECs assess toll charges for the service. CLEC delivery of ISP traffic is, therefore, according to CLECs, ''telephone exchange service,'' a form of local telecommunications for which reciprocal compensation is due. As discussed, however, the Commission consistently has characterized ESPs as ''users of access service'' but has treated them as end users for pricing purposes. Thus, the Commission is unpersuaded by this argument.

18. Having concluded that the jurisdictional nature of ISP-bound traffic is determined by the nature of the end-to-end transmission between an end user and the Internet, the Commission must determine whether that transmission constitutes interstate telecommunications. Section 2(a) of the Act grants the Commission jurisdiction over ''all interstate and foreign communication by wire.'' 47 U.S.C. 152(a). Traffic is deemed interstate ''when the communication or transmission originates in any state, territory, possession of the United States, or the District of Columbia and terminates in another state, territory, possession, or the District of Columbia.'' *Universal Service Report to Congress*. In a conventional circuit-switched network, a call that originates and terminates in a single state is jurisdictionally intrastate, and a call that originates in one state and terminates in a different state (or country) is jurisdictionally interstate. The jurisdictional analysis is less straightforward for the packet-switched network environment of the Internet. An Internet communication does not necessarily have a point of ''termination'' in the traditional sense. An Internet user typically communicates with more than one destination point during a single Internet call, or ''session,'' and may do so either sequentially or simultaneously. In a single Internet communication, an Internet user may, for example, access websites that reside on servers in various states or foreign countries, communicate directly with another Internet user, or chat on-line with a group of Internet users located in the same local exchange or in another country. Further complicating the matter of identifying the geographical destinations of Internet traffic is that the contents of popular websites increasingly are being stored in multiple servers throughout the Internet, based on ''caching'' or website ''mirroring'' techniques. After reviewing the record, the Commission concludes that, although some Internet traffic is intrastate, a substantial portion of Internet traffic involves accessing interstate or foreign websites.

19. Although ISP-bound traffic is jurisdictionally mixed, incumbent LECs argue that it is not technically possible to separate the intrastate and interstate ISP-bound traffic. In the current absence of a federal rule governing inter-carrier compensation, however, the Commission does not find it necessary to reach the question of whether such traffic is separable into intrastate and interstate traffic.

20. The Commission's determination that at least a substantial portion of dial-up ISP-bound traffic is interstate does not, however, alter the current ESP exemption. ESPs, including ISPs, continue to be entitled to purchase their PSTN links through intrastate (local) tariffs rather than through interstate access tariffs. Nor, as the Commission discusses, is it dispositive of interconnection disputes currently before state commissions.

B. Inter-Carrier Compensation for Delivery of ISP-Bound Traffic

21. The Commission finds no reason to interfere with state commission findings as to whether reciprocal compensation provisions of interconnection agreements apply to ISP-bound traffic, pending adoption of a rule establishing an appropriate interstate compensation mechanism. The Commission seeks comment on such a rule In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Inter-Carrier Compensation for ISP-Bound Traffic, CC Docket Nos. 96–98, 99–68, FCC 99–38, Declaratory Ruling in CC Docket No. 96–98 and Notice of Proposed Rulemaking in CC Docket No. 99–68 (rel. February 26, 1999).

22. Currently, the Commission has no rule governing inter-carrier compensation for ISP-bound traffic. In the absence of such a rule, parties may voluntarily include this traffic within the scope of their interconnection agreements under Sections 251 and 252 of the Act, even if these statutory provisions do not apply as a matter of law. Where parties have agreed to include this traffic within their section 251 and 252 interconnection agreements, they are bound by those agreements, as interpreted and enforced by the state commissions.

23. Although the Commission determines that ISP-bound traffic is largely interstate, parties nonetheless may have agreed to treat the traffic as subject to reciprocal compensation. The Commission's treatment of ESP traffic dates from 1983 when the Commission first adopted a different access regime for ESPs. Since then, the Commission has maintained the ESP exemption, pursuant to which it treats ESPs as end users under the access charge regime and permits them to purchase their links to the PSTN through intrastate local business tariffs rather than through interstate access tariffs. As such, the Commission discharged its interstate regulatory obligations through the application of local business tariffs. Thus, although recognizing that it was interstate access, the Commission has treated ISP-bound traffic as though it were local. In addition, incumbent LECs have characterized expenses and revenues associated with ISP-bound traffic as intrastate for separations purposes.

24. Against this backdrop, and in the absence of any contrary Commission rule, parties entering into interconnection agreements may reasonably have agreed, for the purposes of determining whether reciprocal compensation should apply to ISP-bound traffic, that such traffic should be treated in the same manner as local traffic. When construing the parties' agreements to determine whether the parties so agreed, state commissions have the opportunity to consider all the relevant facts, including the negotiation of the agreements in the context of this Commission's longstanding policy of treating this traffic as local, and the conduct of the parties pursuant to those agreements. For example, it may be appropriate for state commissions to consider such factors as whether incumbent LECs serving ESPs (including ISPs) have done so out of intrastate or interstate tariffs; whether revenues associated with those services were counted as intrastate or interstate revenues; whether there is evidence that incumbent LECs or CLECs made any effort to meter this traffic or otherwise segregate it from local traffic, particularly for the purpose of billing one another for reciprocal compensation; whether, in jurisdictions where incumbent LECs bill their end users by message units, incumbent LECs have included calls to ISPs in local telephone charges; and whether, if ISP traffic is not treated as local and subject to reciprocal compensation, incumbent LECs and CLECs would be compensated for this traffic. These factors are

illustrative only; state commissions, not this Commission, are the arbiters of what factors are relevant in ascertaining the parties' intentions. Nothing in this Declaratory Ruling, therefore, necessarily should be construed to question any determination a state commission has made, or may make in the future, that parties have agreed to treat ISP-bound traffic as local traffic under existing interconnection agreements. Finally, the Commission notes that issues regarding whether an entity is properly certified as a LEC if it serves only or predominantly ISPs are matters of state jurisdiction.

25. Even where parties to interconnection agreements do not voluntarily agree on an inter-carrier compensation mechanism for ISP-bound traffic, state commissions nonetheless may determine in their arbitration proceedings at this point that reciprocal compensation should be paid for this traffic. The passage of the 1996 Act raised the novel issue of the applicability of its local competition provisions to the issue of inter-carrier compensation for ISP-bound traffic. Section 252 imposes upon state commissions the statutory duty to approve voluntarily-negotiated interconnection agreements and to arbitrate interconnection disputes. As the Commission observed in the *Local Competition Order,* state commission authority over interconnection agreements pursuant to section 252 ''extends to both interstate and intrastate matters.'' *Local Competition Order.* Thus the mere fact that ISP-bound traffic is largely interstate does not necessarily remove it from the section 251/252 negotiation and arbitration process. However, any such arbitration must be consistent with governing federal law. While to date the Commission has not adopted a specific rule governing the matter, the Commission notes that its policy of treating ISP-bound traffic as local for purposes of interstate access charges would, if applied in the separate context of reciprocal compensation, suggest that such compensation is due for that traffic.

26. Some CLECs construe the Commission's rules treating ISPs as end users for purposes of interstate access charges as requiring the payment of reciprocal compensation for this traffic. Incumbent LECs contend, however, that the Commission's rules preclude the imposition of reciprocal compensation obligations to interstate traffic and that, pursuant to the ESP exemption, LECs carrying ISP-bound traffic are compensated by their end user customers—the originating end user or the ISP. Either of these options might be a reasonable extension of the Commission's rules, but the Commission has never applied either the ESP exemption or its rules regarding the joint provision of access to the situation where two carriers collaborate to deliver traffic to an ISP. As the Commission stated, it currently has no rule addressing the specific issue of inter-carrier compensation for ISP-bound traffic. In the absence of a federal rule, state commissions that have had to fulfill their statutory obligation under section 252 to resolve interconnection disputes between incumbent LECs and CLECs have had no choice but to establish an inter-carrier compensation mechanism and to decide whether and under what circumstances to require the payment of reciprocal compensation. Although reciprocal compensation is mandated under section 251(b)(5) only for the transport and termination of local traffic, neither the statute nor the Commission's rules prohibit a state commission from concluding in an arbitration that reciprocal compensation is appropriate in certain instances not addressed by section 251(b)(5), so long as there is no conflict with governing federal law. 47 CFR 51.701(a); *Local Competition Order.* A state commission's decision to impose reciprocal compensation obligations in an arbitration proceeding—or a subsequent state commission decision that those obligations encompass ISP-bound traffic—does not conflict with any Commission rule regarding ISP bound traffic. By the same token, in the absence of governing federal law, state commissions also are free not to require the payment of reciprocal compensation for this traffic and to adopt another compensation mechanism.

27. State commissions considering what effect, if any, this Declaratory Ruling has on their decisions as to whether reciprocal compensation provisions of interconnection agreements apply to ISP-bound traffic might conclude, depending on the bases of those decisions, that it is not necessary to re-visit those determinations. The Commission recognizes that the Commission's conclusion that ISP-bound traffic is largely interstate might cause some state commissions to re-examine their conclusion that reciprocal compensation is due to the extent that those conclusions are based on a finding that this traffic terminates at an ISP server, but nothing in this Declaratory Ruling precludes state commissions from determining, pursuant to contractual principles or other legal or equitable considerations, that reciprocal compensation is an appropriate interim inter-carrier compensation rule pending completion of the rulemaking initiated In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Inter-Carrier Compensation for ISP-Bound Traffic, CC Docket Nos. 96–98, 99–68, FCC 99–38, Declaratory Ruling in CC Docket No. 96–98 and Notice of Proposed Rulemaking in CC Docket No. 99–68 (rel. February 26, 1999).

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–7159 Filed 3–23–99; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 95–155]

Toll Free Service Access Codes

AGENCY: Federal Communications Commission.

ACTION: Notice; letter.

SUMMARY: The Common Carrier Bureau has issued a letter ending the 888 right-of-first-refusal process and referring non-compliant RespOrgs to the Bureau's Enforcement Division. All unclaimed set-aside 888 numbers (except 888–555–XXXX numbers) will be released into ''spare'' status and become available to all subscribers on a first come, first served basis on April 5, 1999.

FOR FURTHER INFORMATION CONTACT: Marty Schwimmer 202–418–2334.

SUPPLEMENTARY INFORMATION: The Bureau's letter follows:

Release Date: March 19, 1999.

Mr. Michael Wade,

President, Database Service Management, Inc., 6 Corporate Place, Room PYA—1F286, Piscataway, NJ 08854–4157

Re: End of 888 Right-of-First-Refusal Process on April 5, 1999, Referral of Non-Compliant RespOrgs to Enforcement Division

Dear Mr. Wade: In January 1996, the Bureau directed Database Service Management, Inc. (DSMI) to set aside, in ''unavailable'' status, toll free 888 numbers that subscribers with corresponding 800 numbers might wish to request, except that 888–555–XXXX numbers were to remain unavailable because they are associated with directory assistance.[1] In March 1998, the Commission voted to permit holders of

[1] In the Matter of Toll Free Service Access Codes, Report and Order, CC Docket No. 95–155, 11 F.C.C.Rcd. 2496, 2509 (1996).

corresponding 800 numbers to have a ''right of first refusal'' to the set-aside 888 numbers.[2]

The Bureau's letters to you dated April 2 and May 15, 1998, required Responsible Organizations (RespOrgs)—the entities that manage and administer subscriber records in the 800 Service Management System—to notify subscribers of their right of first refusal to request the 888 numbers that had been set aside for them.[3] By August 21, 1998, RespOrgs were to report to DSMI those 888 numbers that subscribers requested to activate or declined to activate, and they were to certify to DSMI that they had attempted to contact the subscribers having right of first refusal to all other set-aside 888 numbers by providing to DSMI each subscriber's name, address, phone number, and the date and means by which the RespOrg attempted the notification. The May 15 letter stated that the Bureau would audit the results to ensure that subscribers received adequate notice from RespOrgs of their right of first refusal. It concluded that the time for subscribers to exercise their right of first refusal will end following completion of the process, when the Bureau directs DSMI to release all remaining unclaimed ''unavailable'' set-aside 888 numbers into ''spare'' status.

The Bureau's letter to you dated November 24, 1998, identified RespOrgs that apparently did not account for all of their set-aside 888 numbers, because they did not certify that they had attempted to contact the subscribers who had right of first refusal for 100% of those numbers.[4] The letter required those RespOrgs to explain, by December 11, 1998, why the required notification process was not completed and what action they were taking to remedy their non-compliance. The letter concluded that RespOrgs failing to provide satisfactory explanation or failing to submit explanations altogether will be referred to the Common Carrier Bureau's Enforcement Division for enforcement action, possibly resulting in forfeiture penalties, decertification as RespOrgs, or further referral to the Department of Justice to determine whether a fine, imprisonment, or both are warranted.[5]

This letter now ends the 888 right-of-first-refusal process. Approximately 370,000 toll free 888 numbers were set aside under the Commission's right-of-first-refusal policy. In compliance with the required procedures, RespOrgs have reported that they notified the subscribers having right of first refusal to approximately 90% of the set-aside 888 numbers. RespOrgs that failed to comply with the procedures are being referred at this time to the Bureau's Enforcement Division.

Therefore, DSMI is directed, beginning at noon and ending by 6:00 pm EST on April 5, 1999, to release all remaining unclaimed ''unavailable'' set-aside 888 numbers (except 888–555–XXXX numbers) into ''spare'' status. At that time, those numbers will become available to all subscribers on a first come, first served basis. The Commission will publish notice of this letter in the **Federal Register** and post it on the Commission's Internet site at www.fcc.gov, so that the public may know in advance when all remaining set-aside 888 numbers will become available. DSMI is also directed to forward a copy of this letter to all RespOrgs.

Sincerely,

Lawrence E. Strickling,

Chief, Common Carrier Bureau.

Federal Communications Commission.

Kurt A. Schroeder,

Deputy Chief, Network Services Division, Common Carrier Bureau.

[FR Doc. 99–7171 Filed 3–23–99; 8:45 am]

BILLING CODE 6712–01–P

[2] In the Matter of Toll Free Service Access Codes, Fourth Report and Order and Memorandum Opinion and Order, CC Docket No. 95–155, 13 F.C.C. Rcd. 9058 (1998). 888–555–XXXX numbers were not included in the 888 right-of-first-refusal process.

[3] Letter from Geraldine A. Matise, Chief, Network Services Division, Common Carrier Bureau, to Mr. Michael Wade, President, Database Service Management, Inc., dated April 2, 1998, 63 FR 18422 (Apr. 15, 1998). Letter from Geraldine A. Matise, Chief, Network Services Division, Common Carrier Bureau, to Mr. Michael Wade, President, Database Service Management, Inc., dated May 15, 1998, 63 FR 29734 (Jun. 1, 1998).

[4] Letter from Anna M. Gomez, Chief, Network Services Division, Common Carrier Bureau, to Mr. Michael Wade, President, Database Service Management, Inc., dated November 24, 1998, 63 FR 67483 (Dec. 7, 1998).

[5] Toll Free Service Access Codes, Second Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 95–155, 12 F.C.C. Rcd. 11162 (1997).

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 92–237; DA 99–546]

Next Meeting of the North American Numbering Council

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: On March 19, 1999, the Commission released a public notice announcing the March 30, 1999, conference call meeting from 3:00 p.m. to 5:00 p.m., and agenda of the North American Numbering Council (NANC). The conference bridge number for domestic participants is 1–888–322–9648 (toll free), the call in number for international participants is 954–797–0718 (caller pays) and the pin for both is 951360. The intended effect of this action is to make the public aware of the NANC's next meeting and its agenda. This notice of the March 30, 1999, NANC conference call meeting is being published in the **Federal Register** less than 15 calendar days prior to the meeting due to NANC's need to discuss a time sensitive issue before the next scheduled meeting. This statement complies with the General Services Administration Management regulations implementing the Federal Advisory Committee Act. *See* 41 CFR § 101–6.1015(b)(2).

FOR FURTHER INFORMATION CONTACT: Jeannie Grimes at (202) 418–2320 or via the Internet at jgrimes@fcc.gov. The address is: Network Services Division, Common Carrier Bureau, Federal Communications Commission, 2000 M Street, NW, Suite 235, Washington, DC 20554. The fax number is: (202) 418–7314. The TTY number is: (202) 418–0484.

SUPPLEMENTARY INFORMATION: This meeting is open to the members of the general public. The FCC will attempt to accommodate as many participants as possible. Participation on the conference call is limited. The public may submit written statements to the NANC, which must be received two business days before the meeting. In addition, oral statements at the meeting by parties or entities not represented on the NANC will be permitted to the extent time permits. Such statements will be limited to five minutes in length by any one party or entity, and requests to make an oral statement must be received two business days before the meeting. Requests to make an oral statement or provide written comments to the NANC should be sent to Jeannie Grimes at the address under ''**FOR FURTHER INFORMATION CONTACT,**'' stated above.

Proposed Agenda

1. Discussion and development of NANC recommendation to the Federal Communications Commission regarding the Lockheed Martin Request for Expeditious Review of the Transfer of the Lockheed Martin Communications Industry Services Business, *In the Matter of Request of Lockheed Martin Corporation and Warburg, Pincus & Co., for Review of the Transfer of the Lockheed Martin Communications Industry Services Business from Lockheed Martin Corporation to an Affiliate of Warburg, Pincus & Co.*, filed with the Federal Communications Commission on December 21, 1998.

2. Other Business.

Federal Communications Commission

Blaise A. Scinto,

Deputy Chief, Network Services Division, Common Carrier Bureau.

[FR Doc. 99–7241 Filed 3–23–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that at 11:30 a.m. on Tuesday, March 23, 1999, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, pursuant to sections 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of Title 5, United States Code, to consider matters relating to the Corporation's corporate, resolution, and supervisory activities.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, N.W., Washington, D.C.

Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Executive Secretary of the Corporation, at (202) 898–6757.

Dated: March 19. 1999.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 99–7255 Filed 3–19–99; 5:05 pm]

BILLING CODE 6714–01–M

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, DC 20573.

Menlo Logistics Global Transportation Services, Inc., One Lagoon Drive, Suite 300, Redwood City, CA 94065–1564, Officers: John H. Williford, President, Robert L. Bianco, Jr., Vice President

Lion Exhibition Freight, Inc., 4742 Aviation Pkwy., Atlanta, GA 30349, Officers: Frank S. Rettig, President, Jerry Hipper, Jr., Exec. Vice President

Pinnacle International Freight, Inc., Southgate Terminal, 1400 Sewells Point Road, Norfolk, VA 23502, Officers: Martyn Burrell, Managing Director, Stuart Burrell, Director

Dated: March 18, 1999.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 99–7140 Filed 3–23–99; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Board of Governors of the Federal Reserve System

SUMMARY: *Background*. On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act, as per 5 CFR 1320.16, to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320 Appendix A.1. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the OMB 83-Is and supporting statements and approved collection of information instruments are 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.

Request for comment on information collection proposal.

The following information collection, which is being handled under this delegated authority, has received initial Board approval and is hereby published for comment. At the end of the comment period, the proposed information collection, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility;

b. The accuracy of the Federal Reserve's estimate of the burden of the proposed information collection, 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 information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Comments must be submitted on or before May 24, 1999.

ADDRESSES: Comments, which should refer to the OMB control number or agency form number, should be addressed to Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, N.W., Washington, DC 20551, or delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m., and to the security control room outside of those hours. Both the mail room and the security control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, N.W. Comments received may be inspected in room M-P-500 between 9:00 a.m. and 5:00 p.m., except as provided in section 261.14 of the Board's Rules Regarding Availability of Information, 12 CFR 261.14(a).

A copy of the comments may also be submitted to the OMB desk officer for the Board: Alexander T. Hunt, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed form and instructions, the Paperwork Reduction Act Submission (OMB 83-I), supporting statement, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below.

Mary M. West, Chief, Financial Reports Section (202-452-3829), Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may contact Diane Jenkins (202-452-3544), Board of Governors of the Federal Reserve System, Washington, DC 20551.

Proposal to approve under OMB delegated authority the extension for three years, without revision of the following report:

1. Report title: Disclosure Requirements in Connection with Regulation CC to Implement the Expedited Funds Availability Act

Agency form number: unnum Reg CC

OMB control number: 7100-0235

Frequency: Event-generated

Reporters: State Member Banks

Annual reporting hours: 174,384 hours

Estimated average hours per response: Notice of exceptions, Case by case hold

notice, or Notice to potential customers upon request: 3 minutes; Notice posted where customers make deposits: 15 minutes; Notice of changes in policy: 20 hours; and Annual notice of new ATMs: 5 hours.

Number of respondents: 989 state member banks

Small businesses are affected.

General description of report: This information collection is mandatory (12 U.S.C. 4008). Because the Federal Reserve System does not collect any information, no issue of confidentiality exists. If during a compliance examination a violation of the Expedited Funds Availability Act is noted, then the information regarding such violation may be kept confidential (5 U.S.C. 552(b)(8)).

Abstract: The third party disclosure requirements are intended to alert consumers about their financial institutions' check-hold policies and to help prevent unintentional (and costly) overdrafts. Most disclosures resulting from a policy change must be made thirty days before actions is taken, or within thirty days if the action makes funds available more quickly. Model forms, clauses, and notices are appended to the regulations to provide guidance.

The Board's Regulation CC applies to all depository institutions, not just state member banks. However, under Paperwork Reduction Act regulations, the Federal Reserve accounts for the burden of the paperwork associated with the regulation only for state member banks. Other agencies account for the Regulation CC paperwork burden on their respective constituencies.

Board of Governors of the Federal Reserve System, March 18, 1999.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 99–7144 Filed 3–23–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL TRADE COMMISSION

[Docket No. 9288]

Intel Corporation; Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the complaint that the Commission issued in June 1998 and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before May 24, 1999.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Avenue, NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: John Horsley or Richard Parker, FTC/H–3105, 600 Pennsylvania Avenue, NW., Washington, DC 20580, (202) 326–2648 or (202) 326–2574.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 3.25(f) of the Commission's Rules of Practice (16 CFR 3.25f), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for March 17, 1999), on the World Wide Web, at ''http://www.ftc.gov/os/actions97.htm.'' A paper copy can be obtained from the FTC Public Reference Room, Room H–130, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326–3627.

Public comment is invited. Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Two paper copies of each comment should be filed, and should be accompanied, if possible, by a 3½-inch diskette containing an electronic copy of the comment. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with section 4.9(b)(b)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii).

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted for public comment an Agreement Containing Consent Order with Intel Corporation (''Intel'') to resolve the matters charged in an administrative Complaint issued by the Commission on June 8, 1998. The Agreement has been placed on the public record for sixty (60) days for receipt of comments from interested members of the public. The Agreement is for settlement purposes only and does not constitute an admission by Intel that the law has been violated as alleged in the Complaint or that the facts alleged in the Complaint, other than jurisdictional facts, are true.

I. The Complaint

The Complaint alleges that Intel has monopoly power in the worldwide market for general purpose microprocessors. According to the Complaint, Intel's market dominance is reflected in a market share approximating 80 percent of dollar sales, together with high entry barriers including large sunk costs of design and manufacture, substantial economies of scale, customers' investments in existing software, the need to attract support from software developers, and reputational barriers.

The Complaint alleges that Intel sought to maintain its dominance by, among other things, denying advance technical information and product samples of microprocessors to Intel customers (''original equipment manufacturers'' or ''OEMs'') and threatening to withhold product from those OEMs as a means of coercing those customers into licensing their patented innovations to Intel.

A microprocessor is an integrated circuit that serves as the central processing unit (or CPU) of computer systems. Microprocessors are sometimes described as the ''brains'' of computers because they perform the major data processing functions essential to computer systems. Advance technical information about new microprocessor products is essential to Intel's OEM customers, who design, develop, manufacture, and sell computer system products such as servers, workstations, and desktop and mobile personal computers. Computer design and development require the effective integration of multiple complex microelectronics components (including microprocessors, memory components, core logic chips, graphics controllers, and various input and output devices) into a coherent system. To achieve such system integration, a computer OEM requires product specifications and other technical information about each component, such as the electrical, mechanical, and thermal characteristics of the microprocessor. OEMs also need advance product samples, errata, and related technical assistance in order to perform system testing and debugging, thereby assuring the high performance and reliability of new computer products.

Intel promotes and markets its microprocessors by providing customers with technical information about new Intel products in advance of their commercial release, subject to formal nondisclosure agreements. Such information sharing has substantial commercial benefits for Intel and its OEM customers. Customers benefit because the information enables them to develop and introduce new computer system products incorporating the latest microprocessors as early and efficiently as possible. Intel benefits because a larger group of OEMs can sell new computer systems incorporating Intel's newest microprocessors as soon as the new microprocessors are introduced to the market.

The Complaint charges that Intel suspended its traditional commercial relationships with three established customers—Digital Equipment Corporation, Intergraph Corporation, and Compaq Computer Corporation—by refusing to provide advance technical information about, and product samples of, Intel microprocessors. Intel did so, according to the Complaint, to force those customers to end disputes with Intel concerning the customers' asserted intellectual property rights and to grant Intel licenses to patented technology developed and owned by those customers. In at least one of the cases, the Complaint alleges that Intel also acted to create uncertainty in the marketplace about the customer's future source of supply of Intel microprocessors.

The computer industry is characterized by short, dynamic product cycles, which are generally measured in months. Time to market is crucial. Indeed, the denial of advance product information is virtually tantamount to a denial of actual parts, because an OEM customer lacking such information simply cannot design new computer systems on a competitive schedule with other OEMs. An OEM who suffers denial of such information over a period of months will lose much of the profits it might otherwise have earned even from a successful new computer model. Continued denial of advance technical information to an OEM by a dominant supplier can make a customer's very existence as an OEM untenable.

As a result of the commercial pressure exerted by Intel's conduct, Compaq and Digital quickly entered in to cross-license arrangements with Intel. Intergraph was able to resist that pressure because it succeeded in obtaining a preliminary injunction from a federal district court requiring Intel to resume and continue supplying Intergraph with advance product information, part samples, and other technical support pending a judicial resolution on the merits of the claims in the lawsuit.

The alleged conduct tends to reinforce Intel's domination of the general purpose microprocessor market in at least three ways. First, the alleged conduct tends to give Intel preferential access to a wide range of technologies being developed by many other firms in the industry. To the extent that firms desiring to compete with Intel are unable to obtain comparable access to such a wide range of technology, they can be seriously disadvantaged, thus making it more difficult for them to challenge Intel's dominance. Second, because patent rights are an important means of promoting innovation, coercion that forces customers to license away rights to microprocessor-related technologies on unfavorable terms to diminish the customers' incentives to develop such technologies, and thus harms competition by reducing innovation. Finally, Intel's conduct tends to make it more difficult for an OEM to serve as a platform for microprocessors that compete with Intel's. Intel's actions ensure that Intel can act as a conduit for technology flows from one OEM to another. That is, an OEM that seeks to enforce its intellectual property rights against other Intel customers may face retaliation from Intel, as the Complaint alleges Compaq did when it sued Packard-Bell for patent infringement. The result is that OEMs find it more difficult to differentiate their computer systems from their competitors through patented technology. As a result, an OEM seeking to use non-Intel microprocessors is less able to offset the lack of an Intel microprocessor by the strength of its own reputation for offering superior technology in other areas. For all of these reasons, continuation of this pattern of conduct would likely have injured competition by entrenching Intel's dominant position.

The Complaint also alleges that Intel's exclusionary conduct was not reasonably necessary to serve any legitimate, procompetitive purpose.

Exclusionary conduct by a monopolist that is reasonably capable of significantly contributing to the maintenance of a firm's dominance through unjustified means has long been understood to give rise to serious competitive concerns. *See, e.g., Lorain Journal Co.* v. *United States,* 342 U.S. 143, 154 n.7 (1951); *Eastman Kodak Co.* v. *Image Technical Services,* 504 U.S. 451, 483 & n.32 (1992); *Aspen Skiing Co.* v. *Aspen Highlands Skiing Co.,* 472 U.S. 585, 596 .19 (1985); *United States* v. *Grinnell Corp.,* 384 U.S. 563, 570–71 (1966); *Barry Wright Corp.* v. *ITT Grinnell Corp.,* 724 F.2d 227, 230 (1st Cir. 1983) (Breyer, J.) (citing 3 P. Areeda & D. Turner, *Antitrust Law,* ¶ 626 at 83 (1978)).

Such conduct harms consumers, not only because competition brings lower prices, but also because competition is a powerful spur to the development of new, better, and more diverse products and processes. Unjustified conduct by a monopolist that removes the incentive to such competition by depriving innovators of their reward or otherwise tilting the playing field against new entrants or fringe competitors thus has a direct and substantial impact upon future consumers.

In the absence of a legitimate business justification that outweighs these concerns, such conduct constitutes a violation of Section 2 of the Sherman Act, 15 U.S.C. 2, and therefore Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45. In issuing Complaint, the Commission found reason to believe that such a violation had occurred.

II. Terms of the Proposed Consent Order

The Proposed Order would remedy all of the concerns embodied in the Complaint. The substantive prohibition, Section II.A., prohibits Intel from withholding or threatening to withhold certain advance technical information from a customer or taking other specified actions with respect to such information for reasons relating to an intellectual property dispute with that customer. It also prohibits Intel from refusing or threatening to refuse to sell microprocessors to a customer for reasons related to an intellectual property dispute with that customer. This provision is designed to prevent Intel from restricting access to microprocessor products, or advance technical information relating to such products, as leverage in an intellectual property dispute against a customer that is receiving advance technical information from Intel at the time the dispute arises. The Proposed Order does not impose any kind of broad ''compulsory licensing'' regime upon Intel. So long as it is otherwise lawful, Intel is free to decide in the first instance whether it chooses to provide or not provide information to customers, and whether to provide more information or earlier information to specific customers in furtherance of a joint venture or other legitimate activity. Moreover, the Order is limited to the types of information that Intel routinely gives to customers to enable them to use Intel microprocessors, not information that would be used to design or

manufacture microprocessors in competition with Intel.

In short, Paragraph II.A. secures to Intel customers the right to seek full and fair value for their intellectual property, free from the risk of curtailment of needed advance technical information or product. With one exception, Intel will be required to continue providing information and product while the customer seeks any of a range of legal and equitable remedies available to it, such as damages (trebled or otherwise increased in appropriate cases), reasonable royalties, and attorneys fees and costs. These remedies will generally be sufficient to protect the customer in its exercise of its intellectual property rights.

The exception involves situations where a customer maintains the right to seek an injunction against Intel's manufacture, use, sale, offer to sell or importation of its microprocessors. The Order contemplates that Intel may request a customer to waive that remedy and give the customer a reasonable opportunity to make a simple written statement to that effect. If the customer refuses, Intel will not be required by this Order to continue providing information or product with respect to the microprocessors that the customer is seeking to enjoin.

This part of the Order strikes an appropriate balance, on a prospective basis, between the interests of Intel and its customers. If a customer chooses to seek an injunction against Intel's microprocessors, it cannot, under the provisions of this Order, be assured of continuing to receive advance technical information about the very same microprocessors that it is attempting to enjoin. If an Intel customer nevertheless wishes to seek injunctive relief against Intel's manufacture, use, sale, offer to sell or importation, it remains free to do so, but without the protections in this Order. In all other circumstances, Intel is required to continue supplying technical information and product under the Proposed Order.

The Proposed Order contains a number of other definitions and provisos to ensure that it will achieve its purposes while not sweeping more broadly than needed to remedy the competitive concerns alleged in the Complaint:

- ''Advance Technical Information'' (or ''AT Information'') is defined in Paragraph I.C. to encompass all information necessary to enable a customer to design and develop, in a timely way, computer systems incorporating Intel microprocessors. The Proposed Order establishes a rebuttable presumption that the provision of AT information six months before the commercial release date of a microprocessor is sufficient to enable the customer to design and develop new systems based on that microprocessor in a competitive and timely way. AT Information does not include detailed microprocessor design information or other information not generally provided to Intel's customers.
- ''Intellectual Property Dispute'' is defined in Paragraph I.D. to include not only situations in which a customer directly or indirectly asserts or threatens to assert patent, copyright or trade secret rights against Intel, but also to situations in which a customer asserts such rights against another Intel customer, or where a customer has refused a request by Intel to license or otherwise convey its intellectual property rights.
- Paragraph II.B.1. states that the Proposed Order does not prohibit Intel from seeking legal or equitable remedies based upon its own intellectual property, provided that it continues to supply AT Information to the customer.
- Paragraph B.2. and B.3. make clear that the Proposed Order does not prohibit Intel from withholding AT Information or making decisions about product supply based on otherwise lawful business considerations unrelated to the existence of the intellectual property dispute. For example, Intel retains the right to withhold information from a customer that has breached an agreement regarding the disclosure or use of the information.
- Paragraph B.4. provides that the Proposed Order does not require Intel to provide AT Information or microprocessors to facilitate the design or development of a type of system that the customer has not designed or developed or demonstrated plans to design or develop within the preceding year.
- Paragraph B.5. makes clear that the Proposed Order does not prohibit Intel from restricting the use of AT Information to the customer's design and development of computer systems that incorporate the microprocessor to which the AT Information pertains. For example, if a recipient of AT Information is in the business of designing competing microprocessors, the Proposed Order would not prevent Intel from using reasonable firewall provisions to prevent that recipient from using the information in that competing business.
- Paragraph B.6. provides that the Proposed Order does not require Intel to disclose information or supply microprocessors that are not otherwise available for disclosure or supply to Intel's customers. If the information or product is not being provided to other customers, then the refusal to provide it to a customer with which Intel has an intellectual property dispute does not provide the kind of leverage that the challenged conduct provides.
- Paragraph B.7. makes clear that, apart from the specific requirements and prohibitions, the Proposed Order does not otherwise limit Intel's intellectual property rights.

In light of the rapidly changing nature of the industry, Intel's obligations under the Proposed Order would terminate in ten years. The Commission appreciates that this same industry dynamic makes it important for it to address disputes over Intel's compliance with the Order expeditiously, should any such disputes arise.

Parts III, IV, and V of the Proposed Order set out various procedural requirement, such as notice to affected persons and annual compliance reporting. Paragraph III.A. permits Intel to provide notice of the Order to recipients of AT Information through a conspicuous notice placed, for thirty days after final entry of the Order, as the first item on the ''In the News'' portion of the ''developers'' page of Intel's World-Wide Web site. Because recipients of AT Information must frequently visit that area of Intel's Website in order to receive information needed in their business, a notice displayed at that location will ensure notice to all affected persons. After the initial thirty-day period, Intel will maintain a link from the ''developers'' page to the Order, so that new customers will also have access to the Order. The other provisions of these paragraphs are standard provisions of the type typically included in Commission orders of this kind.

III. Opportunity for Public Comment

The Proposed Order has been placed on the public record for 60 days in order to receive comments from interested persons. Comments received during this period will become part of the public record. After 60 days, the Commission will again review the Agreement and comments received, and will decide whether it should withdraw from the Agreement or make final the Order contained in the Agreement.

By accepting the Proposed Order subject to final approval, the Commission anticipates that the competitive issues described in the complaint will be resolved. The purpose of this analysis is to invite and facilitate public comment concerning the Proposed Order. It is not intended to constitute an official interpretation of

the Agreement and Proposed Order or in any way to modify their terms.

By direction of the Commission.

Donald S. Clark,

Secretary.

Statement of Commission Mozelle W. Thompson in the Matter of Intel Corporation

The Commission has accepted for public comment an Agreement Containing Consent Order (the ''Agreement'') that settles the charges made by the Commission against Intel in an administrative complaint (the ''Complaint''). The Complaint alleged that Intel unlawfully used its monopoly power in the market for general microprocessors, to coerce computer and other peripheral manufacturers to license intellectual property rights to Intel. The Complaint further alleged that Intel engaged in this conduct in order to maintain its monopoly position.

On June 8, 1998, I voted to issue a Complaint in the above-captioned action because I was concerned that these allegations, if true, threatened to harm competition and opportunity for innovation in the general microprocessor market. This threatened harm would thereby deprive consumers of the price and innovation benefits of a truly competitive marketplace. Today, I vote to accept the Agreement for public comment because I believe the Agreement can address these concerns by preserving competition and providing opportunities for innovation by preventing Intel from using intellectual property disputes to limit access to advance technical information or microprocessor products that it routinely provides customers.

I particularly wish to commend the Commission staff and Intel for working together to craft an agreement that effectively serves the public interest in the context of the important characteristics of the high technology computer industry. By eliminating the possibility of anti-competitive withholding of product and information, the Agreement preserves the benefits of competition while creating a climate for new ideas. This creative solution will benefit consumers and industry alike.

Statement of Commissioner Orson Swindle in the Matter of Intel Corporation

As is already widely known, one of the Federal Trade Commission's most significant antitrust adjudications in years was resolved on the eve of trial with the signing of a consent agreement by complaint counsel and respondent Intel Corporation. A hospitalization for major surgery since March 5 has precluded me for the present from considering the settlement of this important case on its merits. I would have strongly preferred to have been able to evaluate it and to participate in the Commission's vote.

Nevertheless, I fully expect to have an opportunity to formulate and communicate my views on the consent agreement, and I anticipate issuing those views—as an aid to public comment on the settlement—as soon as possible during the 60-day comment period. When my statement is ready for issuance, I will ask the Commission's Office of Public Affairs to release it and will also post it on the Commission's website (www.ftc.gov).

[FR Doc. 99–7211 Filed 3–23–99; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

[File No. 9810329]

Medtronic Inc.; Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before May 24, 1999.

ADDRESS: Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pa. Ave., N.W., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Stephen Riddell or Mark Menna, FTC/H–2105, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580, (202) 326–2721 or (202) 326–2722.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for March 8, 1999), on the World Wide Web, at ''http://www.ftc.gov/os/actions97.htm.'' A paper copy can be obtained from the FTC Public Reference Room, Room H–130, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580, either in person or by calling (202) 326–3627. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Analysis of the Proposed Consent Order and Draft Complaint to Aid Public Comment

The Federal Trade Commission (''Commission'') has accepted for public comment from Medtronic, Inc. (''Medtronic'' or ''proposed Respondent'') an Agreement Containing Consent Order (''the proposed consent order''). The proposed Respondent has also reviewed a draft complaint contemplated by the Commission. The proposed consent order is designed to remedy likely anticompetitive effects arising from the acquisition of Avecor Cardiovascular, Inc. (''Avecor''). Both Medtronic and Avecor are medical technology companies that compete in the manufacture and sale of non-occlusive arterial pumps, perfusion devices used in heart/lung machines. The proposed consent order remedies the acquisition's anticompetitive effects by requiring Medtronic to divest Avecor's non-occlusive arterial pump assets (''Avecor Pump Assets'') as a viable, on-going product line. Medtronic has entered into an agreement to divest the Avecor Pump Assets to Baxter Healthcare Corporation (''Baxter'').

Medtronic, which is headquartered in Minneapolis, Minnesota, is engaged in the research, development, manufacture and sale of medical devices, including implantable devices, such as pacemakers and defibrillators, which regulate heart rhythm; tissue and mechanical heart valves; coronary stents; and perfusion devices for heart/lung machines. Medtronic's perfusion devices include non-occlusive arterial pumps. Medtronic's Bio-Pump is the market leader in non-occlusive arterial pumps. Avecor, also headquartered in Minneapolis, Minnesota, is engaged in the research, development, manufacture and sale of perfusion devices, including,

among other things, non-occlusive arterial pumps. Avecor introduced its non-occlusive arterial pump is the Fall of 1997. Avecor's pump, which utilizes different technology, is still in the early stages of gaining market acceptance. Some in the industry believe that this new pump may offer consumers advantages over the Bio-Pump and other conventional non-occlusive pumps.

Pursuant to an Agreement and Plan of Merger (''Merger Agreement''), signed July 12, 1998, and as subsequently amended, Medtronic agreed to acquire 100% of the voting stock of Avecor for approximately $106 million. The proposed Complaint alleges that the Merger Agreement violates Section 5 of the FTC Act, as amended, 15 U.S.C. § 45, and that the acquisition violates Section 7 of the Clayton Act, as amended, 15 U.S.C. § 15, and Section 5 of the FTC Act, as amended, 15 U.S.C. 45, in the United States market for the research, development, manufacture and sale of non-occlusive arterial pumps.

The draft complaint alleges that medtronic's proposed acquisition of Avecor would lessen competition in the United States market for research, development, manufacture and sale of non-occlusive arterial pumps. Arterial pumps are a perfusion device used primarily to stand in for the heart and lungs during surgical procedures involving those organs. Perfusion devices are products that handle blood in heart/lung machines. These devices circulate and oxygenate the blood and regulate body temperature during heart bypass surgery and other procedures where the heart must be relieved of its pumping function. Arterial pumps circulate the blood. According to the complaint, there are no competitive substitutes for non-occlusive arterial pumps.

The complaint alleges that the United States is the relevant geographic market in which to analyze the effects of the proposed acquisition.

The complaint alleges that the United States market for research, development, manufacture and sale of non-occlusive arterial pumps is highly concentrated, and would become significantly more concentrated as a result of the acquisition. Premerger concentration in this market, as measured by the Herfindahl-Hirschamann Index,[1] exceeds 5,700, and the acquisition would increase the HHI by more than 340 to more than 6,050.

According to the draft complaint, entry into the United States market for research, development, manufacture and sale of non-occlusive arterial pumps is difficult and would not be timely, likely or sufficient to prevent the adverse competitive effects that may result from the proposed acquisition.

The proposed consent order remedies the Commission's competitive concerns about the proposed acquisition. Under Paragraph II of the proposed consent order, Medtronic must divest all of the assets relating to Avecor's non-occlusive arterial pump to Baxter or to another acquirer approved by the Commission. Baxter is a major producer of medical devices used in cardiac surgery and has substantial experience in the research, development, manufacture and sale of other perfusion devices used in cardiac surgery bypass operations. Baxter also is a major provider of perfusion services. In the event that Medtronic does not sell these assets to Baxter or another Commission-approved buyer within ninety (90) days of the Order's becoming final, the Commission may appoint a trustee to divest the Avecor Pump Assets.

The Commission's purpose in evaluating possible purchasers of divested assets is to maintain the competitive environment that existed prior to the acquisition. A proposed buyer must not itself present competitive problems. The Commission believes that Baxter is well qualified to operate the divested assets and that divestiture to Baxter will not be anticompetitive in this market.

The proposed consent order requires Medtronic to provide substantial assistance to the buyer of the Avecor Pump Assets to enable the buyer to obtain FDA approval to manufacture and market the Avecor pumps and reservoirs to use with the pump. First, Medtronic must contract manufacture a supply of the Avecor pumps and the reservoirs used with the Avecor pumps for a year while the buyer establishes its own manufacturing capability. Medtronic must continue to supply the buyer with such reservoirs for a second year if the buyer determines that it needs additional time to establish the manufacturing capability to produce a reservoir to use with the Avecor pump. Second, Medtronic must provide technical assistance to help the buyer obtain necessary FDA approvals and to acquire the capability to manufacture the Avecor pump. Finally, the proposed consent order provides the buyer with the opportunity to hire Avecor employees associated with the Avecor Pump Assets.

In order to facilitate the smooth transfer of assets and ensure that the buyer will get the assistance necessary to independenty manufacture the Avecor pump, the proposed consent order also provides for the appointment of an interim trustee. The interim trustee will serve until the acquirer has received all necessary FDA approvals to manufacture the Avecor pump and becomes an independent producer of the Avecor pump.

Under certain circumstances if the Commission-approved buyer fails to become a viable, independent manufacturer and seller of Avecor pump, the Commission may terminate the divestiture and appoint a divestiture trustee to find a new buyer for the Avecor pump assets. If, prior to obtaining the necessary FDA approvals and beginning to manufacture Avecor pump and a compatible reservoir, the buyer stops selling the Avecor pump for 60 days or otherwise fails to make good faith efforts to sell it, the Commission may step in and terminate the divestiture. The Commission may also terminate the divestiture if the buyer fails to make good faith efforts to obtain the necessary FDA approvals. Similarly, the Commission may revoke the divestiture if the buyer fails to obtain the FDA approvals or to begin manufacturing within one year. Under this last scenario, the Commission may refrain from revoking the divestiture (for a second year) if it appears that the buyer is likely to obtain the FDA approvals or begin to manufacture the products in that time period.

The proposed consent order also required Medtronic to provide to the Commission a report of compliance with the divestiture and assistance provisions of the proposed consent order within sixty (60) days following the date the proposed consent order becomes final and every ninety (90) days thereafter until Medtronic has completed the divestiture and the acquire has obtained all necessary FDA approvals and has become an independent manufacturer of the Avecor pump and a reservoir that can be used with the Avecor pump. The proposed consent order also requires Medtronic to notify the Commission at least thirty (30) days prior to any change in the structure of Medtronic that may affect compliance with the proposed consent order.

[1] The Herfindahl-Hirschmann Index, or ''HHI,'' is a measurement of market concentration calculated by summing the squares of the individual market shares of all participants in the market. Under section 1.51 of the Horizontal Merger Guidelines issued April 2, 1992, by the Federal Trade Commission and the Department of Justice, the Commission considers concentration levels exceeding 1,800 as ''highly concentrated'' and concentration levels between 1,000 and 1,800 as ''moderately concentrated.''

The proposed consent order has been placed on the public record for sixty (60) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreements and the comments received and will decide whether it should withdraw the argument or make the proposed consent order final.

By accepting the proposed consent order subject to final approval, the Commission anticipates that the competitive problems alleged in the complaint will be resolved. The purpose of this analysis is to facilitate public comment on the proposed consent order, including the proposed sale of the Avecor pump assets to Baxter, in order to aid the Commission in its determination of whether to make the proposed consent order final. This analysis is not intended to constitute an official interpretation of the proposed consent order, nor is it intended to modify the terms of the proposed consent order in any way.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 99–7210 Filed 3–23–99; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Ricky Ray Hemophilia Relief Fund Act of 1998, Procedures for Filing Petitions for Payment

AGENCY: Department of Health and Human Services.

ACTION: Notice.

SUMMARY: The Secretary of Health and Human Services (HHS) announces procedures for filing Notices of Intent to File Petitions for payment under the newly enacted Ricky Ray Hemophilia Relief Fund Act of 1998 (''the Act''). Although the Act became law on November 12, 1998, no funds have been appropriated either for the payment of awards to petitioners or for the administrative costs to HHS for operating this new program. Nevertheless, the Act states that HHS shall first establish procedures to implement the Act within 120 days of its enactment. We are establishing as a first procedure under the Act the opportunity for individuals to file Notices of Intent to File Petitions, which may lead to later filings of full petitions and determinations on those petitions if funding is appropriated to operate the program and to pay awards. The timely filing of a Notice of Intent to File a Petition will meet a petitioner's obligation to file within the statutory limitations period for seeking payment from the Ricky Ray Hemophilia Relief Fund. Again, since no funds have been appropriated for this program, submitting a Notice of Intent to File a Petition allows a petitioner to record his or her intent to seek payment should Congress appropriate funds in the future.

ADDRESSES: Notices of intent meeting the requirements described below shall be sent to: Ricky Ray Program Office, Bureau of Health Professions, Room 8–05, 5600 Fishers Lane, Rockville, Maryland 20857.

DATES: The procedures established by this noticed shall take effect on April 23, 1999.

FOR FURTHER INFORMATION CONTACT: Neil Sampson, Deputy Associate Administrator for Health Professions, Health Resources and Services Administration, Room 805, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–2330.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Act provides for compassionate payments with regard to certain individuals with blood-clotting disorders, such as hemophilia, who contracted human immunodeficiency virus (HIV) due to contaminated antihemophilic factor within specified time periods. Section 101 of the Act establishes in the Treasury of the United States a trust fund known as the Ricky Ray Hemophilia Relief Fund. The Act authorizes appropriations to the Fund of $750,000,000. To date, no appropriations have been made for the Fund. In addition, no appropriations have been made for the administrative costs to HHS for operating this program.

Section 102(a) of the Act provides that, if there are sufficient amounts in the Fund to make each payment, the Secretary shall make a single payment of $100,000 to any individual who has an HIV infection and who is described in one of the following paragraphs:

(1) The individual has any form of blood-clotting disorder, such as hemophilia, and was treated with antihemophilic factor at any item during the period beginning on July 1, 1982, and ending on December 31, 1987.

(2) The individual is (A) the lawful spouse of an individual described in paragraph (1) or (B) the former lawful spouse of an individual described in paragraph (1) and was the lawful spouse of the individual at any time after a date, within the period described in paragraph (1) on which the individual was treated as described in paragraph (1) and can assert reasonable certainty of transmission of HIV from such individual.

(3) The individual acquired HIV infection through perinatal transmission from a parent who is an individual described in paragraph (1) or (2).

Section 103 provides for the payment to certain survivors if the individuals listed in section 102 are deceased when that payment is to be made. If the individual eligible for payment dies before filing a petition, a survivor may file a petition on his or her behalf (section 103(c)(2)(B) of the Act).

Although an attorney or other representative is not required, petitioners may engage the services of an attorney or other agent to render services in connection with the petition. No such attorney or agent may receive for services rendered more than five percent of an payment made under the program (section 107 of the Act).

For the full text of the Act, individuals may consult the World Wide Web site of the Library of Congress at ''http://thomas.loc.gov'' and seek Public Law 105–369, or they may seek the public law from a law library.

II. Statutory Procedures

Under section 105 of the Act, petitions seeking payment from the Ricky Ray Hemophilia Relief Fund must be filed by eligible petitioners within 3 years after the date of enactment of the Act, i.e., by November 11, 2001. Accordingly, even though no appropriations have been made for payment with respect to petitioners or for administration of the program, we are establishing the following first procedures to implement the Act.

III. Filing of Notice of Intent

An eligible individual may submit a Notice of Intent to File a Petition stating an intent to file a full petition when appropriate. The Notice of Intent shall include the following:

(1) The name of the petitioner, with current address and phone number.

(2) The name, address, and phone number of the petitioner's attorney of record or other representative for the petition, if any.

The notice of intent shall be sent to: Ricky Ray Program Office, Bureau of Health Professions, Room 8–05, 5600 Fishers Lane, Rockville, Maryland 20857.

On receipt of the Notice of Intent to File a Petition, we will respond with an acknowledgment reflecting a case number assigned to the filing.

Thereafter, petitioner must advise the Department of any change of address, phone number, or attorney of record or other representative. We will not further process a Notice of Intent to File a Petition if we are unable to contact the petitioner or her/his attorney or other representative in the future because of a change in such informaiton of which we were not informed. New name, address, phone number(s) or attorney or other representative information should be sent to the same addressee as will receive Notices of Intent to File a Petition.

The date of receipt of the Notice of Intent will be viewed as the date of filing for purposes of the 3-year time limit on filing petitions (section 105 of the act). The Notice of Intent will not activate Departmental consideration beyond sending an acknowledgment of its receipt since processing and consideration commence on the filing of an actual petition. The sending of the acknowledgment in no way implies that the petitioner has been determined to be eligible for a payment. The review period described in section 103(d) of the Act will begin on receipt of a fu ll petition containing all informaiton to be specified in future instructions. All filings are confidential and will be used only for authorized purposes.

Should funds be appropriated for the administrative costs of the program and for the payment of successful petitions, we will advise those who submit Notices of Intent of the content, format, and deadlines for future submissions related to the petition.

Dated: March 10, 1999.

Donna E. Shalala,

Secretary of Health and Human Services.

[FR Doc. 99–7221 Filed 3–23–99; 8:45 am]

BILLING CODE 4165–15–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98N–1036]

Vale Chemical Co., Inc., et al.; Withdrawal of Approval of 13 New Drug Applications and 1 Abbreviated New Drug Application

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of 13 new drug applications (NDA's) and 1 abbreviated new drug application (ANDA). The basis for the withdrawals is that the holders of the applications have repeatedly failed to file required annual reports for these applications.

EFFECTIVE DATE: March 24, 1999.

FOR FURTHER INFORMATION CONTACT: Olivia A. Pritzlaff, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

SUPPLEMENTARY INFORMATION: The holders of approved applications to market new drugs or antibiotics for human use are required to submit annual reports to FDA concerning each of their approved applications in accordance with § 314.81 (21 CFR 314.81).

In the **Federal Register** of December 2, 1998 (63 FR 66549), FDA offered an opportunity for a hearing on a proposal to withdraw approval of 13 NDA's and 1 ANDA because the firms had failed to submit the required annual reports for these applications.

Wyeth-Ayerst Laboratories, P.O. Box 8299, Philadelphia, PA 19101–8299, notified the agency that they no longer market the products for NDA's 50–088, 50–129, 50–189, 50–197, 50–305, and 50–319. Wyeth-Ayerst did not request a hearing and submitted a formal request for the agency to withdraw approval of the NDA's for these products.

The holders of the other eight applications did not respond to the notice of opportunity for a hearing. Failure to file a written notice of participation and request for a hearing as required by 21 CFR 314.200 constitutes an election by the applicant not to make use of the opportunity for a hearing concerning the proposal to withdraw approval of the applications and a waiver of any contentions concerning the legal status of the drug products. Therefore, the Director, Center for Drug Evaluation and Research, is withdrawing approval of the applications listed in the table of this document.

Application No.	Drug	Applicant
NDA 7–112	Nisaval (pyrilamine maleate) 25 milligram (mg) Tablets	Vale Chemical Co., Inc., 1201 Liberty St., Allentown, PA 18102.
NDA 11–863	Flavihist Cough Syrup	Boyle & Co., 6330 Chalet Dr., Los Angeles, CA 90022.
NDA 50–042	Potassium Penicillin G Diagnostic Sensitivity Powder, 20,000 units	Pfizer Inc., 235 East 42d St., New York, NY 10017–5755.
NDA 50–067	Compocillin-VK Chewable Wafers	Abbott Laboratories, 100 Abbott Park Rd., Abbott Park, IL 60064.
NDA 50–088	Unipen Injection	Wyeth-Ayerst Laboratories, P.O. Box 8299, Philadelphia, PA 19101–8299.
NDA 50–121	Compocillin-VK Tablets	Abbott Laboratories.
NDA 50–122	Compocillin-V Chewable Wafers	Do.
NDA 50–129	Pen-Vee Suspension and Drops	Wyeth-Ayerst Laboratories.
NDA 50–189	Omnipen Tablets	Do.
NDA 50–197	Unipen Injection	Do.
NDA 50–305	Unipen Capsules	Do.
NDA 50–319	Omnipen Chewable Tablets	Do.
NDA 50–413	Geopen Diagnostic Susceptibility Powder	Pfizer Inc.
ANDA 87–387	Aminophylline Injection USP, 25 mg/milliliter	Pharma-Serve, Inc., 218–20 98th Ave., Queens Village, NY 11429.

The Director, Center for Drug Evaluation and Research, under section 505(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(e)), and under authority of 21 CFR 5.82, finds that the holders of the applications listed in the table of this document have repeatedly failed to submit reports required by § 314.81. Therefore, under

this finding, approval of the applications listed in the table of this document, and all amendments and supplements thereto, is hereby withdrawn, effective March 24, 1999.

Dated: March 8, 1999.

Janet Woodcock,

Director, Center for Drug Evaluation and Research.

[FR Doc. 99–7124 Filed 3–23–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Initial Review Group, Subcommittee E—Prevention & Control.

Date: April 28–30, 1999.

Time: 8:00 am to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Mary C. Fletcher, Scientific Review Administrator, Grants Review Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6130 Executive Boulevard, EPN–Room 643G, Bethesda, MD 20814, 301/496–7413.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: March 18, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–7198 Filed 3–23–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Initial Review Group Subcommittee D—Clinical Studies.

Date: April 14–15, 1999.

Time: 12:00 pm to 6:00 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.

Contact Person: Martin H. Goldrosen, PHD, Scientific Review Administrator, Grants Review Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6130 Executive Boulevard, Room 635 C, Rockville, MD 20852–7408, (301) 496–7930, mg85x@nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower, 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: March 18, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–7199 Filed 3–23–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Scientific and Technical Review Board on Biomedical and Behavioral Research Facilities.

Date: May 25–27, 1999.

Open: May 25, 1999, 8:00 am to 9:00 am.

Agenda: To discuss program planning and program accomplishments.

Place: Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Closed: May 25, 1999, 9:00 am to Adjournment.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: D.G. Patel, Scientific Review Administrator, Office of Review, National Center for Research Resources, National Institutes of Health, Bethesda, MD 20892, (301) 435–0822.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333; 93.371, Biomedical Technology; 93.389, Research Infrastructure, National Institutes of Health, HHS)

Dated: March 18, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–7201 Filed 3–23–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Research Resources Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should

notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Research Resources Council.

Date: May 20–21, 1999.

Open: May 20, 1999, 8:30 am to Recess.

Agenda: To discuss policy issues.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31, Conference Room 6, Bethesda, MD 20892.

Closed: May 21, 1999, 8:00 am to 9:30 am.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 9000 Rockville Pike, Conference Room 6, Building 31C, Bethesda, MD 20892.

Contact Person: Louise E. Ramm, Deputy Director, National Center for Research Resources, National Institutes of Health, Building 31, Room 3B11, Bethesda, MD 20892, 301–496–6023.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333; 93.371, Biomedical Technology; 93.389, Research Infrastructure, National Institutes of Health, HHS)

Dated: March 18, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–7202 Filed 3–23–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, National Institute of Neurological Disorders and Stroke.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute of Neurological Disorders and Stroke, including consideration of personal qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, National Institute of Neurological Disorders and Stroke.

Date: May 9–11, 1999.

Closed: May 9, 1999, 7 pm to 10:00 pm.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, Building 31, Conference Room 6C9, 9000 Rockville Pike, Bethesda, MD 20892.

Open: May 10, 1999, 8:00 am to 10:10 am.

Agenda: To conduct Branch presentations.

Place: National Institutes of Health, Building 31, Conference Room 6C9, 9000 Rockville Pike, Bethesda, MD 20892.

Closed: May 10, 1999, 10:10 am to 10:40 am.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, Building 31, Conference Room 6C9, 9000 Rockville Pike, Bethesda, MD 20892.

Open: May 10, 1999, 10:50 am to 3:10 pm.

Agenda: To conduct Branch presentations.

Place: National Institutes of Health, Building 31, Conference Room 6C9, 9000 Rockville Pike, Bethesda, MD 20892.

Closed: May 10, 1999, 3:10 pm to 4:00 pm.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, Building 31, Conference Room 6C9, 9000 Rockville Pike, Bethesda, MD 20892.

Open: May 10, 1999, 4:00 pm to 6:00 pm.

Agenda: To conduct Branch presentations.

Place: National Institutes of Health, Building 31, Conference Room 6C9, 9000 Rockville Pike, Bethesda, MD 20892.

Closed: May 11, 1999, 8:30 am to adjournment.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, Building 31, Conference Room 6C9, 9000 Rockville Pike, Bethesda, MD 20892.

Contact Person: Story C. Landis, PhD, Director, Division of Intramural Activities, NINDS, National Institutes of Health, Building 36, Room 5A05, Bethesda, MD 20892, 301–435–2232.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93,854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: March 17, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–7191 Filed 3–23–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

NAME OF COMMITTEE: National Institute of Neurological Disorders and Stroke Special Emphasis Panel.

DATE: April 13, 1999.

TIME: 1:00 pm to 5:00 pm.

AGENDA: To review and evaluate grant applications.

PLACE: Holiday Inn—Georgetown, 2101 Wisconsin Avenue, N.W., Washington, DC 20007.

CONTACT PERSON: Paul A. Sheehy, Phd., Scientific Review Administrator, Scientific Review Branch, NINDS, Fed. Bldg., Rm. 9C10, 7550 Wisconsin Avenue, MSC 9175, National Institutes of Health, Rockville, MD 20892–9175, 301–496–9223, ps32h@nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: March 17, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–7192 Filed 3–23–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Deafness and Other Communications Disorders Special Emphasis Panel.

Date: April 13, 1999.

Time: 12:00 pm to 3:00 pm.

Agenda: To review and evaluate grant applications.

Place: 6120 Executive Blvd, Suite 400C, Bethesda, MD 20852 (Telephone Conference Call).

Contact Person: George M. Barnas, Phd, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Activities/NIDCD, 6120 Executive Blvd, Bethesda, MD 20892, 301–496–8683.

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: March 18, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–7196 Filed 3–23–99; 8:45 am]

BILLING CODE 4140–01–M

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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 meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel Chronic Fatigue Syndrome.

Date: April 12, 1999.

Time: 8:30 am to 6:00 pm.

Agenda: To review and evaluate grant applications.

Place: Georgetown Holiday Inn, 2101 Wisconsin Avenue, NW, Washington, DC 20007.

Contact Person: Edward W. Schroder, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Solar Building, Room 4C38, 6003 Executive Boulevard MSC 7610, Bethesda, MD 20892–7610, 301–435–8537.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy Immunology, and Transportation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: March 18, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–7197 Filed 3–23–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory General Medical Sciences Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory General Medical Sciences Council.

Date: May 13–14, 1999.

Closed: May 13, 1999, 8:30 am to 11:00 am.

Agenda: To review and evaluate grant applications.

Place: Natcher Building, 45 Center Drive, Conference Rooms E1/E2, Bethesda, MD 20892.

Open: May 13, 1999, 11:00 am to 5:00 pm.

Agenda: For the discussion of program policies and issues, opening remarks, report of the Director, NIGMS, and other business of Council.

Place: Natcher Building, 45 Center Drive, Conference Rooms E1/E2, Bethesda, MD 20892.

Closed: May 14, 1999, 8:30 am to adjournment.

Agenda: To review and evaluate grant applications.

Place: Natcher Building, 45 Center Drive, Conference Rooms E1/E2, Bethesda, MD 20892.

Contact Person: W. Sue Shafer, Deputy Director, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 2AN–32C, Bethesda, MD 20892, (301) 594–4499.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: March 18, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–7200 Filed 3–23–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of 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 meetings of the Board of Regents of the National Library of Medicine.

The meetings will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should

notify the Contact Person listed below in advance of the meeting.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C, as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Regents of the National Library of Medicine.
Date: May 3–5, 1999.
Open: May 4, 1999, 9:00 am to 3:45 pm.
Agenda: Administrative reports and program discussion.
Place: National Library of Medicine, 8600 Rockville Pike, Board Room, Bethesda, MD 20894.
Closed: May 4, 1999, 3:45 pm to 5:00 pm.
Agenda: To review and evaluate grant applications.
Place: National Library of Medicine, 8600 Rockville Pike, Board Room, Bethesda, MD 20894.
Open: May 5, 1999, 9:00 am to 11:30 am.
Agenda: Administrative reports and program discussion.
Place: National Library of Medicine, 8600 Rockville Pike, Board Room, Bethesda, MD 20894.
Contact Person: Donald A.B. Lindberg, MD, Director, National Library of Medicine, National Institutes of Health, PHS, DHHS, Bldg. 38, Room 2E17B, Bethesda, MD 20894.

Name of Committee: Board of Regents of the National Library of Medicine, Planning Subcommittee—Space and Consumer Health.
Date: May 3, 1999.
Open: 3:00 pm to 5:00 pm.
Agenda: Reports and program discussion.
Place: National Library of Medicine, 8600 Rockville Pike, Bldg. 38, Conference Room B, Bethesda, MD 20894.
Contact Person: Donald A.B. Lindberg, MD, Director, National Library of Medicine, National Institutes of Health, PHS, DHHS, Bldg. 38, Room 2E17B, Bethesda, MD 20894.

Name of Committee: Board of Regents of the National Library of Medicine, Subcommittee on Outreach and Public Information.
Date: May 4, 1999.
Open: 7:45 am to 9:00 am.
Agenda: Outreach and Public Information Items.
Place: National Library of Medicine, Building 38, Conference Room B, 8600 Rockville Pike, Bethesda, MD 20894.
Contact Person: Donald A.B. Lindberg, MD, Director, National Library of Medicine, National Institutes of Health, PHS, DHHS, Bldg. 38, Room 2E17B, Bethesda, MD 20894.

Name of Committee: Board of Regents of the National Library of Medicine, Extramural Programs Subcommittee.
Date: May 4, 1999.
Closed: 12:15 pm to 1:30 pm.
Agenda: To review and evaluate grant applications.
Place: National Library of Medicine, Building 38A, HPCC Conference Room B1B30Q, 8600 Rockville Pike, Bethesda, MD 20894.
Contact Person: Donald A.B. Lindberg, MD, Director, National Library of Medicine, National Institutes of Health, PHS, DHHS, Bldg. 38, Room 2E17B, Bethesda, MD 20894.

(Catalogue of Federal Domestic Assistance Program Nos. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: March 16, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–7194 Filed 3–23–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; 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.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: March 23, 1999.
Time: 12:00 pm to 1:00 pm.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge, MD 20892, (Telephone Conference Call).
Contact Person: Nabeeh Mourad, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4212, MSC 7812, (301) 435–1222.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: March 28–29 1999.
Time: 8:00 am to 5:30 pm.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn—Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.
Contact Person: Nancy Shinowara, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4208, MSC 7814, Bethesda, MD 20892–7814, (301) 435–1173, shinowan@drg.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Special Emphasis Panel.
Date: March 28–29, 1999.
Time: 1:00 pm to 5:00 pm.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Georgetown, 2101 Wisconsin Ave, Washington, DC 2007.
Contact Peson: Patricia H. Hand, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4140, MSC 7804, (301) 435–1767.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: March 29–30 1999.
Time: 8:30 am to 5:00 pm.
Agenda: To review and evaluate grant applications.
Place: The Hyatt Regency Hotel, One Bethesda Metro Center, Bethesda, MD 20814.
Contact Person: Dennis Leszczynski, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6170, MSC 7892, Bethesda, MD 20892, (301) 435–1044.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: March 29, 1999.
Time: 1:00 pm to 2:30 pm.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Gopal C. Sharma, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4112, MSC 7816, Bethesda, MD 20892, (301) 435–1783.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: March 29, 1999.
Time: 2:00 pm to 3:00 pm.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Richard Panniers, Scientific Review Administrator, Center for

Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5148, 7842, Bethesda, MD 20892, (301) 435–1741.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1–SSS–8 (55).

Date: March 29, 1999.

Time: 2:00 pm to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Nadarajen Vydelingum, Scientific Review Administrator, Special Study Section—8, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, MSC 7854, Rm 5122, Bethesda, MD 20892, (301) 435–1176, vydelinn@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: March 30, 1999.

Time: 2:00 pm to 3:30 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Garrett V. Keefer, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4190, MSC 7808, Bethesda, MD 20892, (301) 435–1152.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: March 30, 1999.

Time: 12:30 p.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Ronald Dubois, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4156, MSC 7806, Bethesda, MD 20892, (301) 435–1722, duboisr@drg.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: March 31, 1999.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815

Contact Person: Gopal C. Sharma, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4112, MSC 7816, Bethesda, MD 20892, (301) 435–1783.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: March 31–April 2, 1999.

Time: 8:30 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Calbert Laing, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4210, MSC 7812, Bethesda, MD 20892, (301) 435–1221.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS).

Dated: March 17, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–7193 Filed 3–23–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Clinical Center; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Board of Governors of the Warren Grant Magnuson Clinical Center, March 22, 1999, 9 AM to March 22, 1999, 12:00 PM, National Institutes of Health, Clinical Center Medical Board Room, 2C116, 9000 Rockville Pike, Bethesda, MD 20892 which was published in the **Federal Register** on March 1, 1999, 64 FR 10009.

In accordance with the provisions set forth in sec. 552b(c)(6) of Title 5, U.S.C. and sec. 10(d) of Public Law 92–463, a portion of this meting will be closed to the public from approximately 12:00 PM until adjournment for discussion of personnel qualifications and performance, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Dated: March 16, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–7195 Filed 3–23–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Privacy Act of 1974: As Amended; Deletion of an Existing System of Records

AGENCY: Office of the Secretary, Department of the Interior.

ACTION: Proposed deletion of an existing system of records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended (5 U.S.C. 552a), the Office of the Secretary is issuing public notice of its intent to delete an existing Privacy Act system of records notice, OS–12, ''Private Relief Claimants, Department.''

EFFECTIVE DATE: This action will be effective on march 24, 1999.

FOR FURTHER INFORMATION CONTACT: Director, Office of Congressional and Legislative Affairs, MS 6242 MIB, 1849 C Street NW, Washington DC 20240.

SUPPLEMENTARY INFORMATION: In this notice, the Department of the Interior is deleting OS–12, ''Private Relief Claimants, Department'' because a separate system of records, maintained and accessible by the names of individual claimants, seeking relief through legislative action, is no longer being maintained by the Office of Congressional and Legislative Affairs.

Sue Ellen Sloca,

Office of the Secretary Privacy Act Officer, National Business Center.

INTERIOR/OS–12

SYSTEM NAME:

''Private Relief Claimants, Department''—Interior, OS–12.

ORIGINAL FEDERAL REGISTER PUBLICATION CITATION:

54 FR 4915, January 31, 1989.

REASON FOR DELETION:

The Office of Congressional and Legislative Affairs no longer maintains a separate system of records for private relief bills. Records for private relief bills are filed by bill number in the Legislation History Files maintained by the Office of Congressional and Legislative Affairs for the Department of the Interior. Records filed into the Legislative History Files are not accessible by name or other personal identifier.

DISPOSITION OF RECORDS:

All records older than 36 years have been destroyed, in accordance with Office of the Secretary Comprehensive Records Disposal Schedule, Category H, Item 3. All other records have been

retired to the Federal Records Center, for storage, until their officially scheduled destruction date. Requests for notification of the existence of records on named individuals, access to records on named individuals, and amendment of records on named individuals that were filed in ''Private Relief Claimants, Department''—Interior, OS–12, which have not been destroyed, should be sent to the following address: Freedom of Information Act/Privacy Act Coordinator, Office of Congressional and Legislative Affairs, MS 6242 MIB, 1849 C Street NW, Washington, DC 20240.

[FR Doc. 99–7149 Filed 3–23–99; 8:45 am]

BILLING CODE 4310–94–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Privacy Act of 1974: As Amended; Revisions to the Existing System of Records

AGENCY: Office of the Secretary, Department of the Interior.

ACTION: Proposed revisions to an existing system of records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended (5 U.S.C. 552a), the Office of the Secretary is issuing public notice of its intent to modify an existing Privacy Act system of records notice, OS–57, ''Privacy Act Files.'' The revisions will update the system number, update the routine uses, and revise the addresses of the System Locations and System Managers.

EFFECTIVE DATE: These actions will be effective on March 24, 1999.

FOR FURTHER INFORMATION CONTACT: Departmental Privacy Act Officer, U.S. Department of the Interior, Office of Information Resources Management, MS–5312 MIB, 1849 C Street NW, Washington, DC 20240.

SUPPLEMENTARY INFORMATION: In this notice, the Department of the Interior is amending the system notice for OS–57, ''Privacy Act Files,'' to more accurately describe the Department-wide scope of the system of records; to update the routine uses of the data to include disclosures to debt collection agencies, disclosures to other Federal agencies as required in performance of official duties in support of functions compatible with the collection of the data, and disclosures to a consumer reporting agency; and to update the addresses of the System Locations and the System Managers. Accordingly, the Department of the Interior proposes to amend the ''Privacy Act Files,'' OS–57 in its entirety to read as follows:

Sue Ellen Sloca,

Office of the Secretary Privacy Act Officer, National Business Center.

INTERIOR/DOI–57

SYSTEM NAME:

Privacy Act Files—Interior, DOI–57.

SYSTEM LOCATION:

1. U.S. Department of the Interior, Office of Information Resources Management, MS–5312, 1849 C Street NW, Washington, DC 20240.

2. Offices of Privacy Act Officers for each of the Department's bureaus. (Consult the Appendix for addresses of bureau Privacy Act Officers.)

3. Offices of Systems Managers (and officials authorized, by them,) to receive requests for notification of the existence of, access to, and petitions for amendment of records. (Consult individual system notices for addresses of System Managers.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have submitted requests for notification of the existence of, access to, and petitions for amendment of records maintained in formally designated ''systems of records'' under the Privacy Act. Individuals who have filed Privacy Act appeals with the Assistant Secretary-Policy, Management and Budget in accordance with Departmental Privacy Act appeal procedures.

CATEGORIES OF RECORDS IN THE SYSTEM:

Privacy Act requests and appeals; decisions on Privacy Act requests and appeals; accounting of disclosure files; correspondence; reports and related records

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 552a.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The primary purposes of the system are:

(1) To support action on Privacy Act requests and appeals.

(2) To gather information for management and reporting purposes.

Disclosure outside the Department of the Interior may be made:

(1) To other Federal agencies with a subject matter interest in a request or an appeal of a decision on a request.

(2) To the U.S. Department of Justice or in a proceeding before a court or adjudicative body when (a) the United States, the Department of the Interior, a component of the Department, or, when represented by the Government, an employee of the Department is a party to litigation or anticipated litigation or has an interest in such litigation, and (b) the Department of the Interior determines that the disclosure is relevant or compatible with the purpose for which the records were compiled.

(3) Of information indicating the violation or potential violation of a statute, regulation, rule, order, or license to appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violation or for enforcing or implementing the statute, rule, regulation, order, or license.

(4) To a congressional office in connection with an inquiry an individual covered by the system has made to the congressional office.

(5) To a debt collection agency for the purpose of collecting outstanding debts owned to the Department for fees associated with processing Privacy Act requests.

(6) To an official of another Federal agency to provide information needed in the performance of official duties related to reconciling or reconstructing data files, in support of the functions for which the records were collected and maintained.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12). Pursuant to 5 U.S.C. 552a(b)(12), disclosures may be made to a consumer reporting agency as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in manual and automated form.

SAFEGUARDS:

Records are maintained with safeguards meeting the requirements of 43 CFR 2.51.

RETENTION AND DISPOSAL:

Records are retained and disposed of in accordance with General Records Schedule No. 14, Items 21–26.

SYSTEM MANAGER(S) AND ADDRESS:

1. Departmental Privacy Act Officer, U.S. Department of the Interior, Office of Information Resources Management, MS–5312 MIB, 1849 C Street NW, Washington, DC 20240.

2. Bureau Privacy Act Officers. (Consult the Appendix for addresses of bureau Privacy Act Officers.)

3. System Managers. (Consult individual system notices for addresses of System Managers.)

NOTIFICATION PROCEDURES:

A request for notification of the existence of records shall be addressed to the appropriate System Manager. The request shall be in writing, signed by the requester, and comply with the content requirements of 43 CFR 2.60.

RECORD ACCESS PROCEDURES:

A request for access to records shall be addressed to the appropriate System Manager. The request shall be in writing, signed by the requester, and comply with the content requirements of 43 CFR 2.63.

CONTESTING RECORD PROCEDURES:

A request for amendment of a record shall be addressed to the appropriate System Manager. The request shall be in writing, signed by the requester, and comply with the content requirements of 43 CFR 2.71.

RECORDS SOURCE CATEGORIES:

Individuals filing Privacy Act requests and appeals; Departmental officials acting on requests, appeals, and reporting requirements; the Office of Management and Budget.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 99–7150 Filed 3–23–99; 8:45 am]

BILLING CODE 4310–94–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Grant Availability to Federally Recognized Indian Tribes for Projects Implementing Traffic Safety on Indian Reservations

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Indian Affairs (BIA) intends to make funds available to federally-recognized Indian tribes on an annual basis for the purpose of implementing traffic safety projects which are designed to reduce the number of traffic crashes within Indian Country. Due to the limited funding available for this program, all projects will be reviewed and selected on a competitive basis. This notice informs Indian tribes that grant funds are available and that the information packets are forthcoming. Information packets will be distributed by the end of January of each program year to all tribal leaders on the latest tribal leaders list.

DATES: Requests for funds must be received by June l of each program year. Requests not received in the office of the Indian Highway Safety Program at the close of business on June l will not be considered.

ADDRESSES: Each tribe must submit their request to the Bureau of Indian Affairs, Division of Safety Management, Attention: Indian Highway Safety Program Coordinator, 505 Marquette Avenue, NW, Suite 1705, Albuquerque, NM 87102.

FOR FURTHER INFORMATION CONTACT: Tribes should direct questions concerning the grant program to Larry Archambeau, Indian Highway Safety Program Coordinator or to Charles L. Jaynes, Program Administrator, at 505–248–5053.

SUPPLEMENTARY INFORMATION:

Background

The Federal-Aid Highway Act of 1973 (Pub. L. 93–87) provides for U.S. Department of Transportation (DOT) funding to assist Indian tribes in implementing Highway Safety projects. The projects are designed to reduce the number of traffic crashes and their resulting fatalities, injuries, and property damage within Indian reservations. All federally-recognized Indian tribes on Indian reservations are eligible to receive this assistance. All tribes receiving awards of program funds are reimbursed for costs incurred under the terms of 23 U. S.C. 402 and subsequent amendments.

Responsibilities

For purposes of application of the Act, Indian reservations are collectively considered a ''State'' and the Secretary of the Interior is considered the ''Governor of a State.'' The Secretary of the Interior delegated the authority to administer the programs throughout all the reservations in the United States to the Assistant Secretary—Indian Affairs. The Assistant Secretary—Indian Affairs further delegated the responsibility for primary administration of the Indian Highway Safety Program to the Division of Safety Management located in Albuquerque, New Mexico. The Chief, Division of Safety Management, as program administrator of the Indian Highway Safety Program, has three full-time staff members to assist in program matters and provide technical assistance to the Indian tribes. It is at this level that contacts with DOT are made with respect to program approval, funding of projects and technical assistance. DOT, through the National Highway Traffic Safety Administration (NHTSA) and the Federal Highway Administration (FHWA), is responsible for ensuring that the Indian Highway Safety Program is carried out in accordance with 23 U.S.C. 402 and other applicable Federal statutes and regulations.

NHTSA is responsible for the apportionment of funds to the Secretary of the Interior, review and approval of the Indian Highway Safety Plan involving NHTSA highway safety program areas and technical guidance and assistance to the Bureau of Indian Affairs.

Program Areas

The Surface Transportation and Uniform Relocation Assistance Act of 1987, 23 U.S.C. 402(j), required DOT to conduct a rulemaking process to determine those programs most effective in reducing traffic crashes, injuries, and fatalities. Those program areas were determined to be national priority program areas, and include the following:

NHTSA Program Areas:

(1) Alcohol and Other Drug Countermeasures, (2) Police Traffic Services, (3) Occupant Protection, (4) Traffic Records, (5) Emergency Medical Services, (6) Safe Communities, (7) Roadway Safety, and (8) Pedestrian and Bicycle Safety.

Funding Criteria

The Bureau of Indian Affairs will reimburse for eligible costs associated with the following:

(1) *Alcohol and Other Drug Countermeasures*—salary and overtime (DWI enforcement officer), enforcement/education, NHTSA-approved training, approved breath-testing equipment (must be included on most recent Consumer Products List published by NHTSA), community/school alcohol traffic safety education, DWI offender education, prosecution, adjudication, training for judicial personnel and vehicle expenses.

(2) *Police Traffic Services*—salary and overtime (traffic enforcement/education), traffic law enforcement/radar training, speed enforcement equipment (must be on Consumer Products List published by NHTSA), community/school education, and vehicle expenses.

(3) *Motorcycle, Pedestrian, Bicycle Initiatives.*

(4) *Occupant Protection:*

(a) Child passenger safety—child car seat loaner program, car seat

transportation/storage, and public information/education.

(b) Community seat belt program—salary, education/promotional materials, office expense, and NHTSA-approved Occupant Protection Usage and Enforcement (OPUE) training.

(5) *Traffic Records*—salary, ADP equipment, and training.

(6) *Emergency Medical Services*—training, public information and education.

(7) *Roadway Safety*—traffic signs (warning, regulatory, work zone), hardware and sign posts, construction zone safety and flagger training.

(8) *Community Traffic Safety Projects*—project management, public information and education training, law enforcement, prosecution, judicature, data management.

(9) *Safe Community Projects*—salary, project management, public information, law enforcement, prosecution, judicature, data management.

Project Guidelines

BIA will send information packets to the tribes by January of each program year. Upon receipt of the information packet, each tribe should prepare a proposed project based on the following guidelines:

(1) *Program Planning.* Program planning shall be based upon the highway safety problems identified and countermeasures selected by the tribe, using a Safe Community concept for the purpose of reducing traffic crash factors.

(2) *Problem Identification.* Highway traffic safety problems shall be identified from the best data available. This data may be found in tribal enforcement records on traffic crashes. Other sources of data include ambulance records, court and police arrest records. The problem identification process may be aided by using professional opinions of personnel in law enforcement, Indian Health Service, driver education, road engineers, education specialists, and judicial personnel. This data should accompany the funding request. Impact problems should be indicated during the identification process. An impact problem is a highway safety problem that contributes to car crashes, fatalities and/or injuries, and one that may be corrected by the application of countermeasures. Impact problems can be identified from analysis of statewide and/or tribal traffic records. The analyses should consider as a minimum: pedestrian, motorcycle, bicycle, passenger car, school bus, and truck crashes; records on problem drivers, roadside and roadway hazards, alcohol involvement, youth involvement, defective vehicle involvement, suspended or revoked driver involvement, speed involvement, child safety seat and seat belt usage. Data should accompany the funding request.

(3) *Countermeasures Selection.* When tribal traffic safety problems are identified, the tribe's Safe Community coalition must develop appropriate countermeasures to solve or reduce the problems. The tribe should take into account the overall cost of the countermeasures versus their possible effect on the problem.

(4) *Objectives/Performance Indicators.* After countermeasures selection, the objectives of the project must be expressed in clearly defined, time-framed and measurable terms.

(5) *Budget Format.* The activities to be funded shall be outlined in detail according to the following object groups: personnel services, travel and transportation, rent/communications, printing and reproduction, other services, equipment and training. Each object group shall be quantified; i.e., personnel activities should show number to be employed, hours to be employed, hourly rate of pay, etc. Each object group shall have sufficient detail to show what is to be procured, unit cost, quarter in which the procurement is to be made and the total cost, including any tribal contribution to the project. Indirect costs are limited to 15 percent.

(6) *Evaluation Plan.* Evaluation is the process of determining whether a highway safety activity should be undertaken, if it is being properly conducted, and if it has accomplished its objectives. The tribe must include in the funding request a plan explaining how the evaluation will be accomplished and identifying the criteria to be used in measuring performance.

(7) *Technical Assistance.* The Indian Highway Safety Program staff will be available to tribes for technical assistance in the development of tribal projects.

(8) *Section 402 Project Length.* Section 402 funds may not be used to fund the same project at one location or jurisdiction for more than 3 years.

(9) *Certification Regarding Drug-Free Workplace Requirement.* Indian tribes receiving highway safety grants through the Indian Highway Safety Program must certify that they will maintain a drug-free workplace. An individual authorized to sign for the tribe or reservation must sign the certification. The Department of Transportation must receive the certification before it will release grant funds for that tribe or reservation. The certification must be submitted with the tribal Highway Safety project proposal.

Submission Deadline

Each tribe must submit its funding request to the BIA Indian Highway Safety Program, Albuquerque, New Mexico. The request must be received by the Indian Highway Safety Program Coordinator by close of business June 1 of each program year. Requests for extension to this deadline will not be granted. Modifications of the funding request received after the close of the funding period will not be considered in the review and selection processes.

Selection Criteria

Each funding request will be reviewed and evaluated by the Indian Highway Safety Program staff, Law Enforcement staff, Department of Education staff, Office of Alcohol and Substance Abuse staff, and BIA Division of Transportation staff. Each staff member will rank the projects by assigning points to four areas of consideration. The areas of consideration are (1) magnitude of the problem, 50 points; (2) countermeasure selection, 40 points; (3) tribal leadership and community support, 10 points; (4) past performance, 10 points.

Notification of Selection

The tribes selected to participate will be notified by letter. Each tribe selected must include in its proposal a certification regarding drug-free workplace requirements and a duly authorized tribal resolution. The certification and resolution must be on file before grant funds for the tribe or reservation can be released.

Notification of Non-Selection

The Program Administrator will notify each tribe of non-selection. The tribe will be provided the reason for non-selection.

Uniform Administrative Requirements for Grant-in-Aid

Uniform grant administration procedures have been established on a national basis for all grant-in-aid programs by DOT/NHTSA under 49 CFR part 18, ''Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.'' NHTSA and FHWA have codified uniform procedures for State Highway Safety Programs in 23 CFR parts 1200, 1204 and 1205. OMB Circular A–87 and NHTSA order 462–13A have established cost principles applicable to grants and contracts with State and local

government. It is the responsibility of the Indian Highway Safety Program to establish operating procedures consistent with the applicable provisions of these rules.

Standards for Financial Management System

Tribal financial management systems must provide:

(1) Accurate, current, and complete disclosure of financial results of the Highway Safety project.

(2) Adequate record keeping.

(3) Control over and accountability for all funds and assets.

(4) Comparison of actual expenditures with budgeted amounts.

(5) Documentation of accounting records.

(6) Appropriate auditing. Highway Safety projects will be included in the tribal A–128 single audit requirement.

Tribes will provide a quarterly financial and program status report to the BIA Indian Highway Safety Program Coordinator, 505 Marquette, NW, Suite 1705, Albuquerque, New Mexico 87102. These reports will be submitted no later than 7 days beyond the reporting month.

Project Monitoring

During the program year, it is the responsibility of the BIA Indian Highway Safety Program to maintain a degree of project oversight, provide technical assistance as needed to assist the project in fulfilling its objectives, and assure that grant provisions are complied.

Project Evaluation

BIA will conduct a performance evaluation for each Highway Safety project. The evaluation will measure the actual accomplishments to the planned activity. BIA will evaluate the project on-site at the discretion of the Indian Highway Safety Program Administrator.

Dated: March 16, 1999.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 99–7118 Filed 3–23–99; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–130–1020–00; GP9–0140]

Call For Nominations for the Academician Position on the Eastern Washington Resource Advisory Council

AGENCY: Spokane District, Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The purpose of this notice is to solicit nominations for an academician for the Eastern Washington Resource Advisory Council, established and authorized in 1995 by the Secretary of the Interior to provide advice and recommendations to the Bureau of Land Management (BLM) and the U.S. Forest Service on management of public lands.

The Council was established in August, 1995, and is composed of 15 members. This notice requests nominations to fill the vacant academician position for the balance of the term which expires in August of 2001.

The Council, which covers much of eastern Washington, has worked closely with the BLM on the development of standards for rangeland health and guidelines for grazing management, and in providing comments on the Interior Columbia Basin Ecosystem Management Project.

This Council is authorized under the Federal Land Policy and Management Act (FLPMA), which directs the Secretary of the Interior to involve the public in planning and issues related to management of lands administered by BLM. Section 309 of FLPMA directs the Secretary to select 10 to 15 member citizen-based advisory councils that are established and authorized consistent with the requirements of the Federal Advisory Committee Act (FACA). As required by the FACA, Resource Advisory Council membership must be balanced and representative of the various interests concerned with the management of public lands.

Individuals may nominate themselves or others. Nominees must be residents of the State of Washington. Nominees for the academician position will be evaluated based on their experience as an academician in a natural resource related field and their knowledge of the geographic area covered by the Council. Nominees must also have demonstrated a commitment to collaborative resource decision making. All nominations must be accompanied by letters of reference from represented interests or organizations, a completed background information nomination form, as well as any other information that speaks to the nominee's qualifications. The BLM Oregon/Washington State Director, the Forest Service Regional Forester, and the Washington Governor's Office will forward the nominations to the Secretary of the Interior, who will make the appointment to the Council.

This nomination period will also be announced through press releases issued by the BLM Oregon/Washington State Office. Nominations for Resource Advisory Councils should be sent to: Elaine Zielinski, Bureau of Land Management, Oregon/Washington State Director, P.O. Box 2965, Portland, Oregon, 97208–2965.

DATES: All nominations must be received by the Bureau of Land Management Oregon/Washington State Office on or before April 23, 1999.

FOR FURTHER INFORMATION CONTACT: Joseph K. Buesing, Bureau of Land Management, Spokane District Office, 1103 North Fancher, Spokane, Washington, 99212–1275; or call 509–536–1200.

Dated March 18, 1999.

Joseph K. Buesing,

District Manager.

[FR Doc. 99–7145 Filed 3–23–99; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–932–1430–01; F–031039, F–19363]

Public Land Order No. 7379; Revocation of Executive Order No. 782 and Partial Revocation of Public Land Order No. 5187; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order revokes an Executive order in its entirety, and partially revokes a public land order, as they affect approximately 19 acres of public land withdrawn for use by the military, and for classification and protection of the public interest. The land is no longer needed for the purposes for which it was withdrawn. Approximately 8.37 acres have been transferred to other Federal agencies according to the provisions of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 471, *et seq.*). The remaining 10.83 acres have been conveyed out of Federal ownership. This action is for record clearing purposes only.

EFFECTIVE DATE: March 24, 1999.

FOR FURTHER INFORMATION CONTACT: Shirley J. Macke, 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), and by section 22(h)(4) of the Alaska Native Claims Settlement

Act, 43 U.S.C. 1621(h)(4) (1994), it is ordered as follows:

Executive Order No. 782, dated April 16, 1908, which reserved public land at Fairbanks for use by the military, is hereby revoked in its entirety. Public Land Order No. 5187, dated March 15, 1972, which withdrew public lands for classification and for protection of the public interest, is hereby revoked insofar as it affects the following described land:

Located within secs. 10 and 11 of T. 1 S., R. 1 W., Fairbanks Meridian, the parcel, as described in Executive Order No. 782, is more particularly described as follows:

That tract of land included within metes and bounds as follows: Beginning at a stake, centered with a tack, and marked ''Initial Stake No. 1''; Thence N. 81°5°′ E. 18 feet to the left bank of the Chena River at its intersection with the south line of the Independent Lumber Company's property; Thence in a southerly direction following the meanderings of the left bank of the Chena River approximately 853 feet; Thence S. 81°5°′ W. 16 feet to a stake, centered with a tack, and marked ''Stake No. 2''; Thence S. 81°5°′ W. 1100 feet to a stake, centered with a tack, and marked ''Stake No. 3''; Thence N. 08°1°′ W. 850 feet to a stake, centered with a tack, and marked ''Stake No. 4''; Thence N. 81°5°′ E. 982 feet to Initial Stake No. 1, the point of beginning.

The area described contains approximately 19 acres.

Dated: March 12, 1999.

John Berry,

Assistant Secretary of the Interior.

[FR Doc. 99–7204 Filed 3–23–99; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–930–1430–01; COC–019069, COC–011495, COC–28246, COC–28268, COC–28269]

Public Land Order No.7378; Revocation of Three Secretarial Orders and Three Public Land Orders, Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order revokes, in their entireties, three Secretarial orders and three public land orders which withdrew public lands for the Juniper, White River, and Yampa River Storage Reclamation Projects. These projects were never developed and the lands are no longer needed for reclamation purposes. The Bureau of Reclamation has relinquished these withdrawals and this action will relieve the lands of the segregative effects of these withdrawals. The lands have been and will remain open to mineral leasing.

EFFECTIVE DATE: April 23, 1999.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, BLM Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215–7076, 303–239–3706.

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 Nos. 3735, 3736, and 3805, and the Secretarial Orders dated March 25, 1905, June 18, 1909, and May 16, 1917, which withdrew public lands for the Juniper, White River, and Yampa River Storage Reclamation Projects, are hereby revoked in their entireties for lands within the following listed Townships:

Sixth Principal Meridian

Tps. 5 and 6 N., R. 91 W.,
Tps. 5 and 6 N., R. 92 W.,
Tps. 5 and 6 N., R. 93 W.,
Tps. 5 and 6 N., R. 94 W.,
T. 6 N., R. 95 W.,
T. 6 N., R. 97 W.,

The areas described aggregate approximately 36,200 acres in Moffat County. More specific legal descriptions showing sections and subdivisions may be obtained by contacting Doris Chelius at the address or phone number listed above. The documents may also be examined by the public during regular working hours in the Colorado State Office.

2. At 9 a.m. on April 23, 1999, the lands will be opened to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. All valid applications received at or prior to 9 a.m. April 23, 1999 shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

3. At 9 a.m. on April 23, 1999, the lands shall be opened to location and entry under the United States mining laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. Appropriation of any of the lands under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 (1994), shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Dated: March 12, 1999.

John Berry,

Assistant Secretary of the Interior.

[FR Doc. 99–7203 Filed 3–23–99; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–650–00–5440–B101, CACA–38678]

Noncompetitive Sale of Public Land in Kern County, California

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of realty action.

SUMMARY: Notice is hereby given that certain land has been examined and identified as suitable for disposal by direct sale under section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750; 43 U.S.C. 1701, 1713). The land will be offered for sale 60 days after the publication of this notice. The 40 acres of land is described as the NW¼SE¼, section 10, T. 9 N., R. 13 W., San Bernardino Meridian, Kern County, California.

The land has not been used for and is not required for any Federal purpose. The Parcel is difficult and uneconomic to manage as public land. Disposal would best serve the public interest. The disposal would be consistent with the Bureau's planning recommendations as approved in the California Desert Conservation Plan (1986), as amended.

All mineral interest will be offered for conveyance. The mineral interest being offered have no known mineral value. Mr. Snavely has applied for conveyance of those mineral interests offered under the authority of section 209(b) of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750; 43 U.S.C. 1719(b)). The patent issued as the result of the sale will be subject to all valid existing rights and reservations of record and will contain a reservation to the United States for a right-of-way for ditches and canals under the Act of August 30, 1890 (26 Stat. 391, 43 U.S.C. 945); and

The patentee agrees to indemnify, defend, and hold the grantor harmless from any costs, damages, claims, liabilities, and judgements arising from past, present, and future, acts or omissions of the patentee, its

employees, agents, contractors, or lessees arising of or in connection with, patentee's use, occupancy or operations on the patented real property. This indemnification and hold harmless agreement includes, but is not limited to, acts and omissions of the patentee, its employees, agents, contractors, or lessees, arising out of or in connection with the use and/or occupancy on the patented real property which has already resulted or does hereafter result in: (1) Violations of federal, state, and local laws and regulations which are now or may in the future become, applicable to the patented real property; (2) Judgements, claims or demands assessed against the grantor; (3) Costs, expenses, damages incurred by the United States; (4) Other releases or threatened releases on or into land, property and other interests of the grantor by solid waste and/or hazardous substance(s) as defined by federal or state environmental laws; (5) Or other activities by which solid or hazardous substances or wastes, as defined by federal and state environmental laws were generated, released, stored, used or otherwise disposed on the patented real property, and any clean-up response, natural resource damage or other actions related in any manner to said solid or hazardous substances or wastes. This covenant shall be construed as running with the patented real property, and may be enforced by the United States in a court of competent jurisdiction.

FOR FURTHER INFORMATION AND PUBLIC COMMENT CONTACT: Janet Eubanks, Ridgecrest Realty Specialist at (909) 697–5376, located in the California Desert District, 6221 Box Springs Boulevard, Riverside, CA 92507. For a period of 45 days from the date of publication of this notice, interested parties may submit comment. Any adverse comments will be evaluated by the District Manager, who may vacate or modify this realty action and issue a final determination. In the absence of any action by the District Manager, this realty action will become the final determination of the Department of the Interior Comments, including names and street addresses of respondents, will be available for public review at the above address during regular business hours (8:00 a.m. to 4:30 p.m.) Monday through Friday, except holidays. Individual respondents may request confidentiality. If you wish to withhold your name or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials or organizations or businesses, will be made available for public inspection on in their entirety.

SUPPLEMENTARY INFORMATION: The publication of this notice in the **Federal Register** will segregate the public lands described above to the extent that they will not be subject to appropriation under the public and laws, including the mining laws. This segregation will end upon issuance of patent, or 270 days from the date of publication of this notice.

Dated: March 12, 1999.

Alan Stein,

Acting District Manager.

[FR Doc. 99–7126 Filed 3–23–99; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–310–1030–00–HDWT]

Headwaters Forest Reserve, California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of interim management guidelines.

SUMMARY: The U.S. Department of the Interior, Bureau of Land Management, in cooperation with the State of California, will put into place interim management guidelines for the Headwaters Forest Reserve in Humboldt County, California. Under these Interim Management Guidelines, pedestrian access will be allowed into the Headwaters Forest Reserve. Other uses as cited below, on lands in the Headwaters Forest Reserve, will not be allowed on a temporary basis, subject to 43 CFR 8364: Unauthorized use by motorized and non-motorized vehicles in accordance with 43 CFR 8341.2, use of firearms (43 CFR 8365.1–4), overnight camping (43 CFR 8364.1(a)), equestrian use (43 CFR 8364.1(a)), and to the issuance of special use permits including but not limited to special forest products/vegetation collection (43 CFR 8365.1–5(2)), and recreation (43 CFR 8364.1(a)). Decisions on long term public uses at the Headwaters Forest Reserve will be made through the cooperative management plan to be developed over the next year. Employees, agents and permittees of the BLM may be exempt from these restrictions as determined by the Field Manager.

These temporary restrictions are necessary to (1) protect aquatic threatened and endangered species from further ecosystem damage caused by accelerated sedimentation of waterways by unstable road conditions, (2) protect terrestrial threatened and endangered species from unregulated, un-analyzed impacts, and (3) ensure public safety. These temporary restrictions will remain in effect until a formal planning process with full public participation is completed. The planning process will include: a comprehensive ecosystem analysis (watershed analysis) compliant with the standards and guidelines of the Northwest Forest Plan (NWFP), a National Environmental Policy Act (NEPA) analysis, an approved United States Fish and Wildlife (USFW) Section 7 Biological Consultation, and an approved National Marine Fisheries Service (NMFS) Consultation. These processes will lead to a final management plan and record of decision. The formal planning process is scheduled to begin later this year, with appropriate calls for public involvement.

DATES: Restrictions are effective March 24, 1999.

ADDRESSES: Maps and supporting documentation of the Headwaters Reserve are available for review at the following location: Bureau of Land Management, Arcata Field Office, 1695 Heindon Road, Arcata, CA, 95521.

FOR FURTHER INFORMATION CONTACT: Lynda J. Roush, BLM, Arcata Field Manager (707) 825–2300.

SUPPLEMENTARY INFORMATION: The new Headwaters Forest Reserve, described in Section 501 of the 1998 Interior Appropriations Act as the Headwaters Forest and Elk River Property Acquisition, provides a unique opportunity for Federal, State, and local agencies to combine their strengths and involve the public in a Cooperative Resource Management Planning (CRMP) approach. A cooperative agreement among the three levels of government, along with a broad spectrum of interest groups, will oversee and help direct future management of the area. Such an approach will foster and perpetuate a public sense of stewardship for these important biological resources. The land acquisition, funded by the State of California and the Federal Government, will be managed as one landscape, with a seamless meshing of government and private sector entities. Cooperative management will be the cornerstone of the Headwaters Forest. The Bureau of Land Management (BLM) will be the managing agency representing the Federal government. Now that

acquisition is complete, the BLM will help lead the development of a management plan. The focus of the management plan is the protection and monitoring of threatened and endangered species and their aquatic and terrestrial habitats, particularly within the old-growth redwood groves. Management of the surrounding second-growth would include significant restoration activities to accelerate the return of old-growth dependent species. Virgin old-growth forest stands will not be subject to silvicultural practices. The re-establishment of natural drainage networks will include extensive road restoration with the goal of removing, decommissioning, or stabilizing the entire existing road network and re-instating natural processes over time in an essential roadless landscape. Recreation activities and visitor services at the Headwaters Forest Reserve will be developed through the planning process. Visitor use will be managed in a manner consistent with the management of late-successional and old-growth forest habitats and the species they support.

Opportunities for recreation use will be an evolving program where demand and impacts of uses will be analyzed over time. Management of the area will rely on findings of a detailed and comprehensive ecosystem analysis (watershed analysis) and an assessment of forest stand conditions. The findings of these analyses will set the ecological parameters within which all management will be conducted, including restoration, research, recreation, transportation, and monitoring.

Extensive public involvement, along with public outreach and education, will be a vital component in the analysis process.

Lynda J. Roush,

Arcata Field Manager.

[FR Doc. 99–7264 Filed 3–22–99; 12:22 pm]

BILLING CODE 4130–40–P

DEPARTMENT OF THE INTERIOR

National Park Service

60-day Notice of Intention To Request Clearance of Information Collection—Opportunity for Public Comment

AGENCY: Department of the Interior, National Park Service, Cuyahoga Valley National Recreation Area.

ACTION: Notice and request for comments.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. 3507) and 5 CFR Part 1320, Reporting and Recordkeeping Requirements, the National Park Service invites public comments on a proposed information collection. Comments are invited on: (1) The need for the information including whether the information has practical utility; (2) the accuracy of the reporting burden estimate; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the information collection on respondents, including use of automated collection techniques or other forms of information technology.

The National Park Service is conducting a study to assess the positive and negative social consequences of various potential deer management alternatives in Cuyahoga Valley National Recreation Area (CVNRA). This information will be used to help the staff at CVNRA develop a deer management strategy that considers public desires and concerns relating to management of the CVNRA. The following specific study objectives have been identified:

1. Determine the acceptability, tolerance, and preferences among the local public for: deer management activities, the perceived positive and negative consequences of deer management activities, and deer population levels;

2. Identify and determine the intensity of the psychological and emotional Impacts among the local public served by CVNRA due to various deer management actions;

3. Determine the effect of deer management activities on local public attitudes toward the park, its services, and park staff;

4. Determine the degree to which deer management activities may affect park visitation patterns among the local public;

DATES: Public comments on the proposed ICR will be accepted on or before May 24, 1999.

ADDRESSES: Send comments to David C. Fulton, Ph.D., Assistant Unit Leader, Minnesota Cooperative Fish and Wildlife Research Unit, University of Minnesota, 142 Hodson Hall, 1980 Folwell Ave., St. Paul MN 55108–6124.

All responses to this notice will be summarized and included in the requests for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. Copies of draft surveys can be obtained from David C. Fulton, Ph.D., Assistant Unit Leader, Minnesota Cooperative Fish and Wildlife Research Unit, University of Minnesota, 142 Hodson Hall, 1980 Folwell Ave., St. Paul, MN 55108–6124.

FOR FURTHER INFORMATION CONTACT: David Fulton, 612–625–5256, or Jerrilyn Thompson, 612–624–3699.

SUPPLEMENTARY INFORMATION:

Title: Assessing Public Reaction to Potential Deer Management Programs in Cuyahoga Valley National Recreation Area.

Bureau Form Number: None.

OMB Number: To be requested.

Expiration date: To be requested.

Type of request: Request for new clearance.

Description of need: To assess social impacts (positive and negative) of potential deer management programs on Cuyahoga Valley residents.

Automated data collection: At the present time, there is no automated way to gather this information, since it includes asking residents about their perceptions, expectations, and preferences related to deer management programs in the CVNRA.

Description of respondents: Individuals residing in 9 county area surrounding CVNRA.

Estimated average number of respondents: 600.

Estimated average number of responses: Each respondent will respond only one time, so the number of responses will be the same as the number of respondents.

Estimated average burden hours per response: 10 minutes.

Estimated frequency of responses: once.

Estimated annual reporting burden: 100 burden hours.

Leonard E. Stowe,

Information Collection Clearance Officer, National Park Service, WAPC.

[FR Doc. 99–7141 Filed 3–23–99; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Boston Harbor Islands Advisory Council; Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (PL 92–463) that the Boston Harbor Islands Advisory Council will meet on Thursday, April 8, 1999. The meeting will convene at 4:00 PM in the Jury Assembly Room, on the second floor of the New United States Courthouse, 1 Courthouse Way, Boston, Massachusetts.

The Advisory Council was appointed by the Director of National Park Service

pursuant to Public Law 104–333. The 28 members represent business, educational, cultural, and environmental entities; municipalities surrounding Boston Harbor, and Native American interests. The purpose of the Council is to adviser and make recommendations to the Boston Harbor Islands Partnership with respect to the development and implementation of a management plan and the operation of the Boston Harbor National Recreation Area.

The Agenda for this meeting is as follows:

1. Approval of minutes from December 3, 1998, and March 4, 1999.
2. Comments to the Partnership on the preferred alternative from the draft general management plan and environmental impact statement.
3. Discussion regarding the organizational representation on the Council.
4. Election of remaining interest group representatives.
5. Comments on Logan Airport improvements.
6. Approval of the Annual Report.
7. Proposed letter of support for MWRA funding request to the Browne Fund.

The meeting is open to the public. Further information concerning Council meetings may be obtained from the Superintendent, Boston Harbor Islands. Interested persons may make oral/written presentations to the Council or file written statements. Such requests should be made at least seven days prior to the meeting to: Superintendent, Boston Harbor Islands NRA, 408 Atlantic Ave., Boston, MA, 02110, telephone (617) 223–8667.

Dated: March 16, 1999.

Bruce Jacobson,

Superinetendent, Boston Harbor Islands NRA.

[FR Doc 99–7142 Filed 3–23–99; 8:45 am]

BILLING CODE 4310–70–01–M

INTERNATIONAL TRADE COMMISSION

Agricultural Tillage Tools From Brazil (Inv. No. 701–TA–223 (Review))

AGENCY: United States International Trade Commission.

ACTION: Termination of five-year review.

SUMMARY: The subject five-year review was initiated in December 1998 to determine whether revocation of the existing countervailing duty order would be likely to lead to continuation or recurrence of a countervailable subsidy and of material injury to a domestic industry. On March 8, 1999, the Department of Commerce published notice that it was revoking the order because no domestic interested party responded to its notice of initiation by the applicable deadline (64 FR 10993, March 8, 1999). Accordingly, pursuant to section 207.69 of the Commission's Rules of Practice and Procedure (19 CFR § 207.69), the subject review is terminated.

EFFECTIVE DATE: March 8, 1999.

FOR FURTHER INFORMATION CONTACT: Vera Libeau (202–205–3176), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. 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).

Authority: This review is being terminated under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.69 of the Commission's rules (19 CFR § 207.69).

By order of the Commission.

Issued: March 17, 1999.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–7183 Filed 3–23–99; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332–352]

Andean Trade Preference Act: Effect on the U.S. Economy and on Andean Drug Crop Eradication

AGENCY: United States International Trade Commission.

ACTION: Notice of opportunity to submit comments in connection with 1998 annual report.

EFFECTIVE DATE: March 17, 1999.

FOR FURTHER INFORMATION CONTACT: Joanne Guth (202–205–3264), Country and Regional Analysis Division, Office of Economics, U.S. International Trade Commission, Washington, DC 20436.

Background

Section 206 of the Andean Trade Preference Act (ATPA) (19 U.S.C. 3204) requires that the Commission submit annual reports to the Congress regarding the economic impact of the Act on U.S. industries and consumers and, in conjunction with other agencies, the effectiveness of the Act in promoting drug-related crop eradication and crop substitution efforts of the beneficiary countries. Section 206(b) of the Act requires that each report include:

(1) The actual effect of ATPA on the U.S. economy generally as well as on specific domestic industries which produce articles that are like, or directly competitive with, articles being imported under the Act;

(2) The probable future effect that ATPA will have on the U.S. economy generally and on domestic industries affected by the Act; and

(3) The estimated effect that ATPA has had on drug-related crop eradication and crop substitution efforts of beneficiary countries.

In addition, in this year's report the Commission plans to examine the effectiveness of ATPA in promoting export-oriented growth and diversification of production in the beneficiary countries.

Notice of institution of the investigation and the schedule for such reports was published in the **Federal Register** of March 10, 1994 (59 FR 11308). The Commission's sixth annual report on ATPA, covering calendar year 1998, is to be submitted by September 30, 1999.

Written Submissions

The Commission does not plan to hold a public hearing in connection with the preparation of the sixth annual report. However, interested persons are invited to submit written statements concerning the matters to be addressed in the report. Commercial or financial information that a party desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked ''Confidential Business Information'' at the top. All submissions requesting confidential treatment must conform with the requirements of section 201 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). All written submissions, except for confidential business information, will be made available for inspection by interested persons in the Office of the Secretary to the Commission. To be assured of consideration by the Commission, written statements relating to the Commission's report should be submitted at the earliest practical date and should be received no later than June 25, 1999. The Commission's rules do not authorize filing of submissions

with the Secretary by facsimile or electronic means.

Address all submissions to Office of the Secretary, U.S. International Trade Commission, 500 E St., SW, Washington, DC 20436. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

Issued: March 17, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–7186 Filed 3–23–99; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332–227]

Annual Report on the Impact of the Caribbean Basin Economic Recovery Act on U.S. Industries and Consumers

AGENCY: United States International Trade Commission.

ACTION: Notice of opportunity to submit comments in connection with 1998 annual report.

EFFECTIVE DATE: March 17, 1999.

FOR FURTHER INFORMATION CONTACT: Joanne Guth (202–205–3264), Country and Regional Analysis Division, Office of Economics, U.S. International Trade Commission, Washington, DC 20436.

Background

Section 215(a) of the Caribbean Basin Economic Recovery Act (CBERA) (19 U.S.C. 2704(a)) requires that the Commission submit annual reports to the Congress and the President regarding the economic impact of the Act on U.S. industries and consumers. Section 215(b)(1) requires that the reports include:

(1) The actual economic effect of CBERA on the U.S. economy generally as well as on specific industries which produce articles that are like, or directly competitive with, articles being imported under the Act; and

(2) The probable future effect of CBERA on the U.S. economy generally and on industries affected by the Act.

In addition, in this year's report the Commission plans to examine the effectiveness of CBERA in promoting export-oriented growth and diversification of production in the beneficiary countries.

Notice of institution of the investigation and the schedule for such reports was published in the **Federal Register** of May 14, 1986 (51 FR 17678). The fourteenth report, covering calendar year 1998, is to be submitted by September 30, 1999.

Written Submissions

The Commission does not plan to hold a public hearing in connection with the fourteenth annual report. However, interested persons are invited to submit written statements concerning the matters to be addressed in the report. Commercial or financial information that a party desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked ''Confidential Business Information'' at the top. All submissions requesting confidential treatment must conform with the requirements of section 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). All written submissions, except for confidential information, will be made available for inspection by interested persons in the Office of the Secretary to the Commission. To be assured of consideration by the Commission, written statements relating to the Commission's report should be submitted at the earliest practical date and should be received no later than June 25, 1999. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

Address all submissions to the Secretary to the Commission, U.S. International Trade Commission, 500 E St., SW, Washington, DC 20436. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

Issued: March 17, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–7185 Filed 3–23–99; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

Textiles From Columbia and Thailand [Invs. Nos. 701–TA–C and D (Review)], Frozen Concentrated Orange Juice From Brazil [Inv. No. 701–-TA–184 (Review)], Calcium Hypochlorite From Japan [Inv. No. 731–TA–189 (Review)], Castor Oil Products From Brazil [Inv. No. 104–TAA–20 (Review)], Red Raspberries From Canada [Inv. No. 731–TA–196 (Review)]

AGENCY: United States International Trade Commission.

ACTION: Termination of five-year reviews.

SUMMARY: The subject five-year reviews were initiated in December 1998 to determine whether revocation of the existing countervailing duty or antidumping duty orders or termination of the suspension agreements would be likely to lead to continuation or recurrence of dumping or a countervailable subsidy and of material injury to a domestic industry. On February 26, 1999, the Department of Commerce published notice that it was revoking the orders because no domestic interested party responded to its notice of initiation by the applicable deadline (64 FR 9473, February 26, 1999). Accordingly, pursuant to section 207.69 of the Commission's Rules of Practice and Procedure (19 CFR 207.69), the subject reviews are terminated.

EFFECTIVE DATE: February 26, 1999.

FOR FURTHER INFORMATION CONTACT: Vera Libeau (202–205–3176), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. 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).

Authority: These reviews are being terminated under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.69 of the Commission's rules (19 CFR 207.69).

Issued: March 17, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–7184 Filed 3–23–99; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 97–36]

Anthony D. Funches; Grant of Registration With Condition

On July 31, 1997, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause to Anthony Delano Funches (Respondent) of Denver, Colorado, notifying him of an opportunity to show cause as to why DEA should not deny his application for registration as a retail distributor of list I chemicals pursuant to 21 U.S.C. 823(h), for reason that his registration would be inconsistent with the public interest.

Respondent filed a request for a hearing on the issues raised by the Order to Show Cause. Following prehearing procedures, a hearing was held in Denver, Colorado on April 8, 1998, before Administrative Law Judge Mary Ellen Bittner. At the hearing both parties called witnesses to testify and introduced documentary evidence. After the hearing, counsel for the Government submitted proposed findings of fact, conclusions of law and argument. On September 9, 1998, Judge Bittner issued her Opinion and Recommended Ruling, Findings of Fact, Conclusions of Law and Decision, recommending that Respondent's application for registration be granted. Neither party filed exceptions to her recommended decision, and on October 13, 1998, Judge Bittner transmitted the record of these proceedings to the then-Acting Deputy Administrator.

The Deputy Administrator has considered the record in its entirety, and pursuant to 21 CFR 1316.67, hereby issues his final order based upon findings of fact and conclusions of law as hereinafter set forth. The Deputy Administrator adopts, except as specifically noted, the Opinion and Recommended Ruling, Findings of Fact, Conclusions of Law and Decision of the Administrative Law Judge, and his adoption is in no manner diminished by any recitation of facts, issues and conclusions herein, or of any failure to mention a matter of fact or law.

The Deputy Administrator finds that in 1991 Respondent moved back to Colorado and renewed his acquaintance with a married couple who owned and operated a store called ''The Connection'' located at 4811 East Colfax Avenue, Denver, Colorado. Approximately three years later, the husband died and his widow inherited The Connection. Respondent assisted her in the management of the business and at some print, they married. They eventually separated and his wife abandoned the store at 4811 East Colfax. Respondent obtained a retail business license and registered the store under the trade name ''The Other Connection.'' The Other Connection sells ephedrine products, as well as items such as sunglasses and jewelry, and also provides services such as fax machines and notary.

On August 25, 1995, Respondent applied for a DEA registration as a retail distributor of ephedrine and pseudoephedrine [1] and listed 4811 East Colfax as the proposed registered location. However in light of his divorce settlement, Respondent ultimately moved the business to 4815 East Colfax.[2] In his application, Respondent answered ''no'' to the question which asks, ''Has the applicant ever been convicted of a crime in connection with controlled substances/listed chemicals under State or Federal law, or ever surrendered or had a Federal registration revoked, suspended, restricted or denied, or ever had a State professional license or registration revoked, suspended, denied, restricted or placed on probation?''

On February 6, 1996, a DEA investigator visited The Other Connection as part of a preregistration investigation. The investigator testified at the hearing in this matter that his inspection revealed that Respondent's recordkeeping and security procedures were adequate and that Respondent's transactions were ''well documented.'' In addition to the on-site visit, the investigator conducted a criminal history of Respondent which revealed that on June 1, 1978, Respondent and a co-defendant were charged in the District Court in the County of Denver, Colorado, with Conspiracy to Sell Narcotic Drugs, Sale of Narcotic Drugs, and Possession of a Dangerous Drug in violation of Colorado law. On January 17, 1979, Respondent pled guilty to the misdemeanor charge of possession of marijuana and the other counts against him were dismissed. Respondent was sentenced to 12 months imprisonment with the sentence suspended provided that he not be ''convicted of any state or Federal law, city ordinance other than traffic'' and was fined $250.00.

The investigator testified that further investigation of Respondent's conviction revealed a report of a DEA task force officer which stated that in August 1977, Respondent and his co-defendant made arrangements to sell 56.65 grams of cocaine for $4,000.00 to the undercover officer. According to the report, the three met at a designated location; the undercover officer presented the other two with $4,000.00 in exchange for a package; Respondent opened the package so that the undercover officer could sample its contents; and respondent requested that he and the co-defendant be allowed to keep the remnants of the sample for their own use. According to a laboratory analysis report the substance was cocaine and was purchased by the undercover officer from the co-defendant on August 4, 1977. Respondent's name is not mentioned anywhere in this laboratory analysis report.

Respondent admitted at the hearing in this matter that he was present during the alleged cocaine transaction in 1977, but denied handling either the money or the package of cocaine. He explained that at the time of the transaction he was a professional bodyguard and was present during the transaction to provide protection for the co-defendant. Regarding the marijuana, Respondent conceded that although he cannot recall specifically having marijuana in his possession on that occasion over 20 years ago, it was possible since ''[i]n those years, I was known to have a drink here and there, or a smoke.'' However, Respondent testified that he no longer uses illegal drugs.

In explaining why he indicated on his DEA application that he had never been convicted of a crime related to controlled substances, Respondent testified that he did not believe that he still had a marijuana conviction on his record. It was his understanding that the misdemeanor marijuana charge to which he pled guilty would be ''erased'' from his record after one year. Respondent testified that in the 20 years since his conviction, he has undergone the screening processes required to

[1] The parties stipulated that a DEA registration is not required for the retail distribution of pseudoephedrine, and therefore the only chemical relevant to this application is ephedrine.

[2] The Order to Show Cause listed the proposed registered location as 4811 East Colfax Avenue, however by letter dated July 16, 1996, Respondent submitted a request to modify the address on his application to reflect 4815 East Colfax Avenue. Since Respondent's request to modify his application was submitted prior to the issuance of the Order to Show Clause in this matter, Respondent was not required to obtain permission from DEA to modify his application. *See* 21 CFR 1309.36(a).

become a notary public, to redeem weapons out of pawn, and to purchase property, and at no time has he ever been informed that there is a marijuana conviction on his record.

In arguing against Respondent's registration, the Government concedes that Respondent maintains good records, however it contends that Respondent's 1977 misdemeanor conviction, his failure to report this conviction on his application for registration, and his failure to take responsibility for his role in the alleged 1977 sale of cocaine to an undercover officer indicate that Respondent ''does not possess a sense of the high responsibilities required of a registrant.'' Respondent argues that he did not intend to mislead DEA on his application, that he believed that he no longer had a conviction on his record, that whatever happened over 20 years ago is not an accurate measure of his trustworthiness today, and that DEA's own inspection of his store revealed that he is responsible in his security and recordkeeping procedures.

Pursuant to 21 U.S.C. 823(h), the Deputy Administrator may deny an application for a DEA Certificate of Registration, if he determines that granting the registration would be inconsistent with the public interest. Section 823(h) requires that the following factors be considered in determining the public interest:

(1) Maintenance by the applicant of effective controls against diversion of listed chemicals into other than legitimate channels;

(2) Compliance by the applicant with applicable Federal, State, and local law;

(3) Any prior conviction record of the applicant under Federal or State laws relating to controlled substances or to chemicals controlled under Federal or State law;

(4) Any past experience of the applicant in the manufacture and distribution of chemicals;

(5) such other factors as are relevant to and consistent with the public health and safety. Like with the factors found in 21 U.S.C. 823(f) relating to the registration of practitioners to handle controlled substances, these factors are to be considered in the disjunctive; the Deputy Administrator may properly rely on any one or a combination of these factors, and give each factor the weight he deems appropriate in determining whether an application should be denied. *See Henry J. Schwarz, Jr., M.D.,* 54 F.R. 16,422 (1989).

Regarding factor one, the DEA investigator who conducted the preregistration inspection testified that Respondent's security procedures at his store are adequate and that transactions are well documented. The Government conceded that Respondent is a ''scrupulous recordkeeper as well as attentive to proper controls.''

As to factor two, the Government alleged that Respondent participated in the sale of cocaine to an undercover officer in 1977. Judge Bittner found Respondent's testimony credible that he was present, but did not participate in the transaction. However, the Deputy Administrator finds the DEA task force officer's report compelling since it was written at the time of the cocaine transaction. The report indicates that Respondent was not only present, but participated in the transaction by opening the package so the officer could sample its contents and by requesting that he and his co-defendant be allowed to keep the remnants of the sample for their own use. Therefore unlike Judge Bittner, the Deputy Administrator concludes that Respondent was involved in the unlawful distribution of cocaine in violation of 21 U.S.C. 841(a)(1). The Deputy Administrator also finds that Respondent violated Colorado law by being in possession of marijuana at the time of his arrest in 1977.

The Government also alleged that Respondent violated 21 U.S.C. 843(a)(4)(A) by furnishing false material information in his application for registration since he indicated that he had never been convicted of a crime related to controlled substances. Respondent testified that he did not intend to mislead DEA because he honestly believed that his 1979 misdemeanor marijuana possession conviction no longer remained on his record. Judge Bittner found Respondent's testimony to be credible. The Deputy Administrator agrees with Judge Bittner that Respondent did not violate 21 U.S.C. 843(a)(4)(A) because he did not intentionally furnish false information on his application for registration.

Regarding factor three, it is undisputed that Respondent was convicted of one count of misdemeanor possession of marijuana on January 17, 1979, in the District Court in the County of Denver, Colorado.

As to factor four, the record shows that Respondent has been involved in the distribution of chemicals since at least 1994, and there is no evidence of any wrongdoing. In fact according to the DEA investigator, Respondent's recordkeeping and security are adequate.

Finally regarding factor five, Judge Bittner noted that it is appropriate to consider the grounds for revocation of a registration found in 21 U.S.C. 824(a), when determining whether to deny an application for registration. DEA has consistently held that ''the law would not require an agency to indulge in the useless act of granting a license on one day only to withdraw it on the next,'' and therefore the bases for revocation found in 21 U.S.C. 824(a) are properly considered under 21 U.S.C. 823(f)(5). *See Alan R. Schankman, M.D.,* F.R. 45,260 (1998); *Kuen H. Chen, M.D.,* 58 F.R. 65,401 (1993)). Judge Bittner concluded that because of the similar statutory construction and legislative intent between 21 U.S.C. 823(f) and 823(h), the grounds for revocation found in 21 U.S.C. 824(a) are likewise incorporated into 21 U.S.C. 823(h)(5). Therefore, the Deputy Administrator agrees with Judge Bittner that it is appropriate to consider whether Respondent's application for DEA registration should be denied pursuant to 21 U.S.C. 823(h)(5) and 824(a)(1) on grounds that he materially falsified his application.

There is no dispute that Respondent materially falsified his application by indicating that he had never been convicted of a crime related to controlled substances. However according to Respondent, he believed that he no longer had a conviction on his record, and that nothing has occurred in the 20 years since the conviction to alert him otherwise. As Judge Bittner noted, a registration may still be revoked based upon an unintentional falsification of an application, but a lack of intent to deceive is a relevant consideration in determining whether a registrant or applicant should possess a DEA registration. *See Samuel Arnold, D.D.S.,* 63 F.R. 8687 (1998); *Martha Hernandez, M.D.,* 62 F.R. 61,145 (1997).

Here, Respondent's falsification was not based on intentional or negligent behavior. Instead, Respondent believed that he no longer had a conviction on his record and therefore he believed that he was answering the question correctly when he filled out the application for registration. The Deputy Administrator agrees with Judge Bittner that under these circumstances it would be too sever a sanction to deny Respondent's application for registration based upon his falsification of his application.

Judge Bittner recommended that Respondent should be issued a DEA Certification of Registration. While there is no dispute that Respondent operated his business today in a responsible manner, the Deputy Administrator is extremely troubled by Respondent's failure to acknowledge the nature of his involvement in the 1977 cocaine

transaction. The Deputy Administrator agrees that it would not be in the public interest to deny Respondent's application. However, given Respondent's failure to accept responsibility for his past behavior, Respondent should be subject to greater scrutiny. Therefore, the Deputy Administrator concludes that for three years after issuance of the DEA Certification of Registration, Respondent shall permit the inspection of his premises without an administrative inspection warrant or other means of entry.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that the application for registration as a retail distributor of ephedrine, submitted by Anthony Delano Funches, be, and it hereby is, granted subject to the above described condition. This order is effective upon issuance of the DEA Certification of Registration, but not later than April 23, 1999.

Dated: March 17, 1999.

Donnie R. Marshall,

Deputy Administrator.

[FR Doc. 99–7122 Filed 3–23–99; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 98–1]

Jacqueline Lee Pierson Energy Outlet; Denial of Application

On July 31, 1997, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause to two businesses with the same address in Westminster, Colorado, The New Connection, and Jacqueline Lee Pierson, Energy Outlet, notifying them of an opportunity to show cause as to why DEA should not deny their applications for registration as a retail distributor of list I chemicals pursuant to 21 U.S.C. 823(h), for reason that the registration would be inconsistent with the public interest.

Both The New Connection and Energy Outlet (Respondent) filed a request for a hearing on the issues raised by the Order to Show Cause, and the matters were docketed before Administrative Law Judge Gail A. Randall. On October 21, 1997, Judge Randall issued a Memorandum and Order consolidating the proceedings regarding The New Connection and Respondent, for hearing purposes only and a hearing was held in Denver, Colorado on February 11 and 12, 1998. At the hearing, all parties called witnesses to testify and introduced documentary evidence. After, the hearing, all parties submitted proposed findings of fact, conclusions of law and argument. On September 30, 1998, Judge Randall issued her Opinion and Recommended Ruling, recommending that Respondent's application for registration be denied. On October 20, 1998, Respondent filed exceptions to Judge Randall's Opinion and Recommended Ruling, and on November 5, 1998, Judge Randall transmitted the record of these proceedings to the then-Acting Deputy Administrator.

The Deputy Administrator has considered the record in its entirety, and pursuant to 21 CFR 1316.67, hereby issues his final order based upon findings of fact and conclusions of law as hereinafter set forth. The Deputy Administrator adopts, in full, the Opinion and Recommended Ruling of the Administrative Law Judge. His adoption is in no manner diminished by any recitation of facts, issues and conclusions herein, of any failure to mention a matter of fact or law.

The Deputy Administrator finds that ephedrine is a List I chemical that has legitimate uses, but it can also be used to manufacture methamphetamine, a Schedule II controlled substance. Methamphetamine is a very potent central nervous system stimulant and its abuse is a growing problem in the United States. Ephedrine extracted from over-the-counter ephedrine products is often used in the illicit manufacture of methamphetamine.

In an effort to curb the use of licit chemicals in the illicit manufacture of controlled substances, Congress amended the Controlled Substances Act in 1988 with the passage of the Chemical Diversion and Trafficking Act (CDTA). Pub. L. 100–690, 102 Stat. 4181 (1988). The CDTA required that records and reports be made of certain transactions involving various chemicals. However, products containing ephedrine were exempt from the recordkeeping and reporting requirements because they were approved for marketing under the Federal Food, Drug, and Cosmetic Act. The CDTA also made it illegal to distribute a listed chemical ''knowing, or having reasonable cause to believe, that the listed chemical will be used to manufacture a controlled substance. . . .'' See 21 U.S.C. 841(d)(2). This provision applied to the distribution of all listed chemicals including ephedrine products.

In 1979, Jacqueline Pierson began working as a salesperson for MFC Enterprises which operated a chain of four stores called the Connection. Michael F. Carles was the president of MFC Enterprises. In 1990, Ms. Pierson began working at the Connection store located at 7115 North Federal Boulevard in Westminster, Colorado. According to Ms. Pierson, in 1991 and 1992 almost 100% of the store's sales were of ephedrine products; the store was primarily engaged in small sales; and she did not receive compensation based on her sales.

DEA began an investigation of the Connection stores, after receiving information that they were receiving large quantities of ephedrine from an east coast distributor. On July 31, 1991, an undercover DEA agent purchased 10,000 ephedrine tablets from Ms. Pierson at the North Federal Connection store without giving any reason for the purchase.

In February 1992, DEA personnel, acting in their official capacity, went to the North Federal Connection store and advised Ms. Pierson of the recordkeeping and reporting requirements imposed by the CDTA. They also advised Ms. Pierson that ephedrine is often used in the illicit manufacture of methamphetamine and that if she suspected that someone was purchasing ephedrine for that purpose, she should contact DEA.

The undercover agent returned to the North Federal Connection store on August 28, 1992, and purchased 30,000 ephedrine tablets. On this occasion, the undercover agent handed Ms. Pierson a handwritten formula for the manufacture of methamphetamine entitled ''Synthesis for Meth'' and asked her whether the ephedrine tablets he was purchasing would work in the formula. Ms. Pierson indicated that they would.

A second undercover agent made visits to the North Federal Connection store. On June 19, 1992, this undercover agent attempted to buy 20 1,000-count bottles of ephedrine at one of the other Connection stores. An employee at that store sold the undercover agent 10 bottles and told him that he could buy the other 20 bottles at the North Federal Connection store. At the North Federal Connection store the undercover agent met Ms. Pierson and told her that on his next visit he wanted to purchase 75 1,000-count bottles of ephedrine. Ms. Pierson indicated that she would need two days advance notice in order to have that amount available and she would have to talk to her boss about the

sale. The undercover agent then bought the 10 1,000-count bottles of ephedrine for $250.00.

The next visit by the second undercover agent to the North Federal Connection store was on August 20, 1992. He purchased 50,000 ephedrine tablets for $750.00. According to the undercover agent, he indicated to Ms. Pierson that he was concerned with making repeated visits to the store because he did not want the police to figure out that he was buying the ephedrine to make ''meth.'' He further indicated that he was buying the ephedrine for a motorcycle gang, and Ms. Pierson asked him not to tell them where he was buying the tablets. Then at Ms. Pierson's request, the undercover agent helped her remove the labels from the bottles that indicated the store's name and address.

On September 15, 1992, the second undercover agent went to the North Federal Connection store, however Ms. Pierson was not at the store that day. He returned to the store on September 17, 1992. The undercover agent did not purchase any ephedrine on this occasion, but he did discuss with Ms. Pierson the possibility of purchasing 100,000 tablets of ephedrine and told her that it would be used to manufacture methamphetamine. Ms. Pierson indicated that she could sell the undercover agent 50,000 tablets at the North Federal Connection store; that he could buy another 50,000 at a different Connection store; that he should return the following day to make the purchase; and that it would cost a total of $1,500.

On September 18, 1992, the undercover agent returned to the North Connection Store with only $900.00. He explained to Ms. Pierson that he had already spent $600.00 on hydriodic acid to be used by the motorcycle gang to manufacture methamphetamine. The undercover agent then purchased 60,000 tablets of ephedrine. Ms. Pierson again expressed concern about the removal of the store labels and told the undercover agent that she would put the bottles of ephedrine in black plastic bags so the neighboring businesses would not be suspicious.

As a result of the investigation, the corporate officers and employees of the Connection stores, including Ms. Pierson, were indicted in the United States District Court for the District of Colorado and charged with violations of 21 U.S.C. 841(d)(2), 846 and 18 U.S.C. 2. On January 20, 1993, a search warrant was executed at the North Federal Connection store and Ms. Pierson was arrested. At the time of her arrest, Ms. Pierson indicated that Michael Carles had died in approximately October 1992. She also acknowledged that she knew why the undercover agents were purportedly obtaining the ephedrine.

Initially, Ms. Pierson agreed to plead guilty to some of the charges against her and to testify on behalf of the Government at the trial of the other employees. During her pretrial debriefing, Ms. Pierson again acknowledged that she understood that the undercover purchases of ephedrine were intended to be used in the illegal manufacture of controlled substances. However, Ms. Pierson subsequently filed a motion to withdraw her guilty pleas and disclosed that she suffered from various mental and emotional disorders. it was also disclosed in her motion that Ms. Pierson was dominated and intimidated by Michael Carles who physically abused her and threatened her with extreme harm. In addition the motion stated that Ms. Pierson ''did not want to sell large quantities of ephedrine to [the] undercover government agents but did so because Michael Carles insisted she do so and informed her that she was not doing anything wrong.''

The Government did not oppose Ms. Pierson's motion indicating that the indictment against Ms. Pierson's co-defendants had been dismissed and that had Ms. Pierson also gone to trial, her case would have similarly been dismissed. Therefore, the criminal charges against Ms. Pierson were ultimately dismissed.

Recognizing, among other things that the use of over-the-counter ephedrine products in the illegal manufacture of methamphetamine was increasing, Congress passed the Domestic Chemical Diversion Control Act of 1993 (DCDCA). Pub. L. 103–200, 107 Stat. 2333 (1993). The DCDCA removed the exemption from recordkeeping and reporting requirements for single entity ephedrine products. In addition, the DCDCA also established a registration system for certain handlers of List I chemicals, including retail distributors. DEA temporarily exempted from registration anyone who submitted an application by November 13, 1995, until such time as DEA either approves or denies the application. *See* 21 CFR 1310.09 (1996).

According to Ms. Pierson, she assumed ownership of the North Federal Connection Store after Michael Carles died in October 1992. Ms. Pierson submitted an application dated August 10, 1995, for registration for the New Connection located at 7115 North Federal Boulevard, Westminster, Colorado, as a retail distributor of ephedrine, pseudoephedrine and phenylpropanolamine. It was determined during the course of the hearing in this matter that a retail distributor does not need to be registered with DEA to distribute pseudoephedrine and phenylpropanolamine. Therefore the only chemical relevant to the application in this proceeding is ephedrine.

In February 1996, DEA personnel conducted a preregistration inspection of the New Connection. One of the investigators who conducted this inspection testified at the hearing in this matter that the security system at The New Connection was suitable for registration purposes and that the store's records appeared to be in order. During the inspection, DEA personnel discussed the relevant requirements with Ms. Pierson and two other employees in the back room of the store. One of the employees left the discussion on two to three occasions to conduct business transactions in the front of the store. As the DEA investigator was leaving the store he noticed three sales records that had been left on the counter that contained only the names of the customers and no other information. When questioned, Ms. Pierson and the employee indicated that these were repeat customers and the remaining information would be filled in when the store was not so busy. The investigator was unable to say at the hearing what substances were sold during the three transactions, and Ms. Pierson indicated that the forms were used for both ephedrine and pseudoephedrine sales.

On March 12, 1996, Ms. Pierson submitted an application for registration as a retail distributor of ephedrine for Respondent, the Energy Outlet, also located at 7115 North Federal Boulevard, Westminster, Colorado. During a telephone conversation with the DEA investigator, Ms. Pierson indicated that she simply was trying to effectuate a name change and thought that she had to submit another application. According to the investigator, because it was the same location as the New Connection which had just been inspected the month before, no additional preregistration inspection was conducted. Ms. Pierson testified that she is not operating two businesses at the North Federal location and only wants a DEA registration for the Energy Outlet.

At the hearing in this matter Ms. Pierson testified that she reported every large transaction to Michael Carles who told her that he would make the proper reports. She stated that she was afraid of Michael Carles because he abused and threatened her and he told her that if she did not make the sales, he would find someone who would. Ms. Pierson

testified that ''in an effort to improve her self-esteem, as part of her efforts to separate herself from Michael Carles' control,'' she took a ''life skills'' course.

Ms. Pierson further testified that the undercover agents used the word ''meth'' and at that time she did not know what ''meth'' meant. However, she also stated that she suspected that the 1992 purchases were being used to manufacture controlled substances. With respect to the removal of the labels, Ms. Pierson testified that this was done at Michael Carles' request and also because she was afraid of motorcycle gangs and she did not want them to know where the ephedrine came from.

Ms. Pierson testified that currently ephedrine accounts for 60–75% of her sales at Respondent and she has not made any large sales since she took over the store from Michael Carles. It is her current policy to sell no more than two 250-count bottles to any customer in a week.

At the time of the hearing, Ms. Pierson was still suffering from panic attacks and severe anxiety. However, she testified that her condition did not interfere with her ability to operate her business.

The Government contends that granting Respondent's application for registration would be inconsistent with the public interest due to Ms. Pierson's sales of ephedrine in 1991 and 1992 to the undercover agents when she had reason to believe that the ephedrine would be used to illegally manufacture a controlled substance and due to Respondent's failure to keep complete and accurate records of the three sales transactions that occurred during DEA's preregistration inspection in February 1996. Respondent contends however that the Government has failed to establish that issuance of a DEA registration to Respondent would be inconsistent with the public interest. Respondent argues that Ms. Pierson should not be punished for activities that occurred in 1991 and 1992 while the store was under different ownership and that Respondent has been operating in a legal manner since Ms. Pierson became its owner. Further, Respondent contends that how the business is currently being run is more relevant than what occurred in 1991 and 1992. Pursuant to 21 U.S.C. 823(h), the Deputy Administrator may deny an application for a DEA Certificate of Registration, if he determines that granting the registration would be inconsistent with the public interest. Section 832(h) requires that the following factors be considered in determining the public interest:

(1) Maintenance by the applicant of effective controls against diversion of listed chemicals into other than legitimate channels;

(2) Compliance by the applicant with applicable Federal, State, and local law;

(3) Any prior conviction record for the applicant under Federal or State laws relating to controlled substances or to chemicals controlled under Federal or State law;

(4) Any past experience of the applicant in the manufacture and distribution of chemicals; and

(5) Such other factors as are relevant to and consistent with the public health and safety.

In passing the DCDCA, Congress intended to create a registration system parallel to that in place for controlled substances:

> This registration system is precisely patterned after the system which has been successfully applied to legitimate controlled substances for over 20 years. It will enable DEA to prevent a firm from distributing these covered chemicals if it can be shown that registration of the firm is contrary to the public interest.

139 Cong. Rec. E2341 (daily ed. Oct. 5, 1993) (statement of Rep. Stupak). Therefore, consistent with this congressional intent, these factors are to be considered in the disjunctive; the Deputy Administrator may properly rely on any one or a combination of these factors, and give each factor the weight he deems appropriate in determining whether an application should be denied. *See Henry J. Schwarz, Jr., M.D.,* 54 FR 16,422 (1989).

As a preliminary matter, DEA has consistently held that a retail store operates under the control of its owners, stockholders, or other employees, and therefore the conduct of these individuals is relevant in evaluating the fitness of an applicant or registrant for registration. *See, e.g., Rick's Pharmacy,* 62 FR 42,595 (1997); *Big T Pharmacy, Inc.,* 47 FR 51,830 (1982). Since Ms. Pierson is the owner of Respondent, her conduct is relevant in determining whether or not to grant Respondent's application for registration.

Regarding factor one, the preregistration inspection that was conducted in February 1996 revealed that Respondent's security system was suitable for registration and its records appeared to be in order. While this preregistration inspection was conducted based upon the application filed by Ms. Pierson for The New Connection, it is clear that the application that is the subject of this proceeding was filed by Ms. Pierson merely to change the name of the business from The New Connection to the Energy Outlet. Therefore, it is reasonable to consider the findings of the February 1996 preregistration inspection in evaluating Energy Outlet's application for registration.

As to factor two, the Deputy Administrator finds that based upon the law in place at the time of the undercover transactions in 1991 and 1992, Ms. Pierson was not required to maintain records of these transactions. However, Ms. Pierson clearly violated 21 U.S.C. 841(d)(2) by distributing ephedrine to the undercover agents knowing or having reasonable cause to believe that the ephedrine would be used to manufacture methamphetamine. On August 28, 1992, Ms. Pierson sold 30,000 ephedrine tablets to the first undercover agent even though he handed her a formula for the manufacture of methamphetamine entitled ''Syntheses for Meth,'' and asked her whether the tablets would work in the formula. The second undercover agent purchased 50,000 ephedrine tablets from Ms. Pierson on August 20, 1992. During this visit, the undercover agent indicated that he was concerned with making repeated visits to the store because he did not want the police to figure out that he was buying ephedrine for the manufacture of ''meth.'' It was also on this occasion that Ms. Pierson requested that the labels with the store's name and address be removed from the bottles. Finally, Ms. Pierson sold the undercover agent 60,000 ephedrine tablets on September 18, 1992, even after the undercover agent stated that he had earlier purchased $600.00 worth of hydriodic acid to be used by a motorcycle gang to make ''meth.'' On this occasion, not only did Ms. Pierson express concerns regarding the bottles' labels, but she also stated that she would put the bottles of ephedrine in black plastic bags so the neighboring businesses would not be suspicious.

At the hearing, Ms. Pierson testified that she did not understand what the agents meant by ''meth.'' However, the Deputy Administrator finds Ms. Pierson's contention beyond belief. First, DEA personnel specifically discussed with her in February 1992 that ephedrine is used in the illegal manufacture of methamphetamine. Also, at the time the second undercover agent was discussing that the ephedrine was to be used to manufacture ''meth,'' he was also stating that he was concerned that the police would figure out why he was purchasing the ephedrine. Clearly, Ms. Pierson knew or had reasonable cause to believe that the ephedrine she distributed to the undercover agents was going to be used

in the illegal manufacture of methamphetamine.

The Government contends that Respondent failed to fully record three sales transactions that occurred during the February 1996 preregistration inspection in violation of 21 U.S.C. 830 and 21 CFR 1310.06. However, the Deputy Administrator agrees with Judge Randall that the Government has failed to prove by a preponderance of the evidence that a violation occurred. Pursuant to 21 CFR 1310.03, records must be made of regulated transactions. But, there is no evidence that the transactions in question were in fact regulated transactions. The investigator did not determine what substances were sold during these transactions. Therefore, the Deputy Administrator cannot find that a record was even required to be made of transactions.

But even assuming that these were regulated transactions requiring a record, there is no requirement that a record of a transaction must be made simultaneously with the transaction. Ms. Pierson and her employee indicated that these were repeat customers and the records would be completed when the store was not as busy. Consequently, the Deputy Administrator finds that the record does not establish that there was a violation of the recordkeeping requirements in February 1996.

Regarding factor three, there is no evidence that an owner, shareholder or employee of Respondent has been convicted of any crimes relating to controlled substances of listed chemicals.

As to Respondent's experience in distributing chemicals, Ms. Pierson has been involved in the distribution of chemicals since approximately 1986. As discussed previously, in 1991 and 1992, Ms. Pierson distributed large quantities of ephedrine tablets knowing or having reasonable cause to believe that they would be used for illegal purposes. However, the record also indicates that since Ms. Pierson became the owner of Respondent in approximately October 1992, there have been no allegations of improper distributions. According to Ms. Pierson, her current policy is to sell no more than two 250-count bottles to any customer in a week.

Regarding factor five, Judge Randall expressed concern regarding Ms. Pierson's ability to responsibly handle ephedrine in the future. Ms. Pierson testified that her behavior in 1991 and 1992 was a result of her fear of Michael Carles. As Judge Randall stated, ''Jacqueline Pierson's previous vulnerability to intimidation and coercion is significant, particularly in light of the serious problem with methamphetamine abuse and the dangerous nature of the illicit market.'' Judge Randall noted that ''the record contains no basis for assurances that, in the future, Ms. Pierson would not be equally intimidated by an abusive customer into engaging in similar conduct.'' The Deputy Administrator finds it particularly troubling that at the time of the hearing Ms. Pierson suffered from panic attacks and severe anxiety and there is no evidence in the record regarding her ongoing treatment for these disorders. However, there is no evidence in the record of any improper conduct by Ms. Pierson since 1992, and as Judge Randall noted, ''this passage of time is also significant, for it adds credence to Ms. Pierson's assertions that her mental and emotional difficulties do not interfere with her ability to manage the Respondent business.''

Judge Randall concluded that Respondent's registration would be inconsistent with the public interest in light of Ms. Pierson's 1992 distributions of ephedrine knowing or having reasonable cause to believe that it would be used in the illicit manufacture of a controlled substance and her susceptibility to intimidation ''that is not rebutted by evidence in the record, except by the passage of time without any further documented incidents.'' Judge Randall further found that Ms. Pierson has failed to present adequate assurances ''that she has developed the needed self-esteem to withstand potential customer abuses from the customer base her products attract.'' Accordingly, Judge Randall recommended that the application of Energy Outlet be denied.

In its exceptions to Judge Randall's Opinion and Recommended Ruling, Respondent argues that Judge Randall unfairly interjected a new issue, Ms. Pierson's lack of self-esteem, into the proceedings. However, as stated in Judge Randall's opinion ''[t]he issue in this case is whether or not the record as a whole establishes by a preponderance of the evidence that the DEA should deny the application, dated March 12, 1996, for a DEA Certificate of Registration as a retail distributor of the List I chemical ephedrine, of the Energy Outlet, pursuant to 21 U.S.C. 823(h), because to grant such application would be inconsistent with the public interest.'' In light of Ms. Pierson's behavior in 1991 and 1992, the Government clearly established a prima facie case for denial of Respondent's application for registration. In determining whether Respondent's application should be granted or denied, the Deputy Administrator must look at all of the evidence presented. During the course of these proceedings, Respondent raised the issue of Ms. Pierson's susceptibility to intimidation and her lack of self-esteem in explaining her behavior in 1991 and 1992. In evaluating whether Respondent can responsibly handle the listed chemical ephedrine in the future, it is reasonable to consider whether the same susceptibility to intimidation and lack of self-esteem still exists.

The Deputy Administrator concludes that Respondent's registration with DEA would be inconsistent with the public interest. Although there have been no allegations of any wrongdoing since 1992, Ms. Pierson's behavior in 1991 and 1992 was unconscionable. She clearly sold ephedrine to the undercover agents knowing or having reasonable cause to believe that it would be used to illegally manufacture methamphetamine. In attempting to explain her behavior, Ms. Pierson testified that she was intimidated by the previous owner of the store, and lacked the self-esteem to withstand his intimidation. The Deputy Administrator is extremely troubled by this explanation.

In a previous DEA case involving a practitioner registered with DEA to handle controlled substances, the practitioner also attributed his improper conduct to intimidation by another. *James B. Rivers, D.M.D.*, 53 FR 20,382 (1988). In revoking the practitioner's DEA registration, the then-Administrator concluded that:

> Respondent does not appreciate the enormous responsibility which accompanies DEA registration. Registrants under the Controlled Substances Act are required to prevent the diversion of controlled substances into the illicit market. Respondent's conduct reflects a failure to take adequate action to protect the public health and safety. Respondent has failed to provide any satisfactory assurances that a situation such as the one he alleges occurred with the individual is unlikely to recur. *Id.*

Similarly, those registered to distribute List I chemicals must prevent the diversion of the chemicals to the illegal manufacture of controlled substances. Here, the Deputy Administrator is not convinced that Ms. Pierson could withstand intimidation in the future by an individual seeking to purchase ephedrine for illegal purposes. Other than Ms. Pierson's statement that she took a ''self-help class,'' there is no evidence in the record regarding any treatment that she has received. In fact, Ms. Pierson still suffers from panic attacks and anxiety. The Deputy Administrator recognizes that there have been no allegations of wrongdoing by Ms. Pierson since 1992, however this

is outweighed by the lack of adequate assurances that Ms. Pierson has the needed self-esteem to withstand being intimidated to sell ephedrine for illegal purposes in the future.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that the application for registration as a retail distributor of ephedrine, submitted by Jacqueline Lee Pierson, d/b/a Energy Outlet, be, and it hereby is, denied. This order is effective April 23, 1999.

Dated: March 17, 1999.

Donnie R. Marshall,

Deputy Administrator.

[FR Doc. 99–7123 Filed 3–23–99; 8:45 am]

BILLING CODE 4410–09–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (99–048)]

Government-Owned Inventions, Available for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Availability of Inventions for Licensing.

SUMMARY: The invention listed below is assigned to the National Aeronautics and Space Administration, has been filed in the United States Patent and Trademark Office, and is available for licensing.

DATES: March 24, 1999.

FOR FURTHER INFORMATION CONTACT: Ms. Beth Vrioni, Patent Counsel, John F. Kennedy Space Center, Mail Stop MM–E, Kennedy Space Center, FL 32899; telephone (407) 867–6225.

NASA Case No. KSC–12023: Cable and Line Inspection Mech.

Dated: March 16, 1999.

Edward A. Frankle,

General Counsel.

[FR Doc. 99–7120 Filed 3–23–99; 8:45 am]

BILLING CODE 7510–01–U

NATIONAL INDIAN GAMING COMMISSION

Notice of Approval of Class III Tribal Gaming Ordinances

AGENCY: National Indian Gaming Commission.

ACTION: Notice; Correction.

SUMMARY: The National Indian Gaming Commission published the Notice of Approval of Class III Tribal Gaming Ordinances on January 29, 1999. The list of approved class III tribal gaming ordinances was incorrect. This publication corrects the mistake and updates additional approvals.

EFFECTIVE DATE: This notice is effective March 24, 1999.

FOR FURTHER INFORMATION CONTACT: Frances Fragua at the National Indian Gaming Commission, 202/632–7003, or by facsimile at 202/632–7066 (not toll-free numbers).

SUPPLEMENTARY INFORMATION: The Indian Gaming Regulatory Act (IGRA) 25 U.S.C. 2701 *et seq.*, was signed into law on October 17, 1988. The IGRA established the National Indian Gaming Commission (Commission). Section 2710 of the IGRA authorizes the Commission to approve class II and class III tribal gaming ordinances. Section 2710(d)(2)(B) of the IGRA as implemented by 25 C.F.R. Section 522.8 (58 FR 5811 (January 22, 1993)), requires the Commission to publish, in the **Federal Register**, approved class III gaming ordinances.

The IGRA requires all tribal gaming ordinances to contain the same requirements concerning ownership of the gaming activity, use of net revenues, annual audits, health and safety, background investigations and licensing of key employees. The Commission, therefore, believes that publication of each ordinance in the **Federal Register** would be redundant and result in unnecessary cost to the Commission. The Commission believes that publishing a notice of approval of each class III gaming ordinance is sufficient to meet the requirements of 25 U.S.C. Section 2710(d)(2)(B). Also, the Commission will make copies of approved class III ordinances available to the public upon request. Requests can be made in writing to the: National Indian Gaming Commission, 1441 L Street, N.W., Suite 9100, Washington, D.C. 20005.

The notice of tribal gaming ordinances authorizing class III gaming approved by the Chairman on January 29, 1999, and published in the **Federal Register**, should be corrected as follows for the following tribes:

1. Bear River Band of the Rohnerville Rancheria
2. Burns Paiute Tribe
3. Confederated Salish & Kootenai Tribes of the Flathead Nation
4. Dry Creek Rancheria
5. Grand Portage Band of Chippewa Indians
6. Iowa Tribe of Kansas and Nebraska
7. Kalispel Tribe of Indians
8. Little Traverse Bay Bands of Odawa Indians
9. Ottawa Tribe of Oklahoma
10. Pawnee Tribe of Oklahoma
11. Pueblo of Santa Clara
12. Rumsey Indian Rancheria
13. Santa Ysabel Band of Mission Indians
14. Scotts Valley Band of Pomo Indians
15. Skokomish Indian Tribe
16. Table Mountain Rancheria
17. Trinidad Rancheria
18. Washoe Tribe of Nevada and California

Barry Brandon,

General Counsel.

[FR Doc. 99–7121 Filed 3–23–99; 8:45 am]

BILLING CODE 7565–01–U

NUCLEAR REGULATORY COMMISSION

[Docket No. 72–3]

Carolina Power & Light Company, H. B. Robinson Nuclear Plant; Notice of Docketing of the Materials License SNM–2502 Amendment Application for the H. B. Robinson Independent Spent Fuel Storage Installation

By letter dated January 11, 1999, Carolina Power and Light Company (CP&L) submitted an application to the Nuclear Regulatory Commission (the Commission) in accordance with 10 CFR Part 72 requesting the amendment of the H. B. Robinson (HBR) independent spent fuel storage installation (ISFSI) license (SNM–2502) and the Technical Specifications for the ISFSI located at Darlington County, South Carolina. CP&L is seeking Commission approval to amend the materials license and the ISFSI Technical Specifications to change the reporting frequency for the radiological effluent reports from semi-annual to annual. Such an action would align the reporting requirements for CP&L's license with those currently in 10 CFR 50.36a(a)(2) and 10 CFR 72.44(d)(3).

This application was docketed under 10 CFR Part 72; the ISFSI Docket No. is 72–3 and will remain the same for this action. The amendment of an ISFSI license is subject to the Commission's approval.

The Commission will determine if the amendment presents a genuine issue as to whether public health and safety will be significantly affected and may issue either a notice of hearing or a notice of proposed action and opportunity for hearing in accordance with 10 CFR 72.46(b)(1) or take immediate action on the amendment in accordance with 10 CFR 72.46(b)(2).

For further details with respect to this application, see the application dated January 11, 1999, which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW, Washington, DC 20555 and at the Local Public Document Room located at the Hartsville Memorial Library, 147 W. College Avenue, Hartsville, SC 29550.

Dated at Rockville, Maryland, this 12th day of March 1999.

For the Nuclear Regulatory Commission.

E. William Brach,

Director, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 99–7164 Filed 3–23–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–413 and 50–414]

Duke Energy Corporation; Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. NPF–35 and NPF–52, issued to Duke Energy Corporation (the licensee), for operation of the Catawba Nuclear Station, Units 1 and 2, located in York County, South Carolina.

The proposed amendments would revise the Technical Specifications (TS), deleting Section 3.3.7, ''Control Room Area Ventilation System (CRAVS) Actuation Instrumentation,'' and Section 3.3.8, ''Auxiliary Building Filtered Ventilation Exhaust System (ABFVES) Actuation Instrumentation.'' The basis for the proposed deletion is that Sections 3.3.7 and 3.3.8 do not correctly reflect the design of the Catawba CRAVS and ABFVES control systems. At Catawba, the Solid State Protection System (SSPS) provides input to the diesel generator load sequencer, which, in turn, provides input to the CRAVS and ABFVES. Thus, the CRAVS and ABFVES are not directly actuated by the SSPS. However, the surveillance requirements currently specified by Sections 3.3.7 and 3.3.8 are written on the assumption that the CRAVS and ABFVES are directly actuated by the SSPS.

The licensee requested approval on an exigent basis pursuant to its request for enforcement discretion. The staff verbally granted the enforcement discretion on March 11, 1999, and affirmed it by a subsequent notice of enforcement discretion (NOED) letter dated March 15, 1999. The NOED letter stated that the enforcement discretion is in effect until the issuance of amendments to revise Section 3.3.7 and 3.3.8. The staff intends to issue such amendments within 4 weeks of the NOED letter. This issuance schedule would not be accommodated by the normal 30-day notice to the public.

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

Pursuant to 10 CFR 50.91(a)(6) for amendments to be granted under exigent circumstances, the NRC staff must determine that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

First Standard

Implementation of this amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated. Approval of this amendment will have no effect on accident probabilities or consequences. No physical changes are being made to the plant design which will result in any increase in accident probabilities. Approval of this amendment will not result in a decrease in system or equipment reliability or availability. Therefore, there will be no impact on any accident consequences.

Second Standard

Implementation of this amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated. No new accident causal mechanisms are created as a result of NRC approval of this amendment request. No changes are being made to the plant that will introduce any new accident causal mechanisms.

Third Standard

Implementation of this amendment would not involve a significant reduction in a margin of safety. Margin of safety is related to the confidence in the ability of the fission product barriers to perform their design functions during and following an accident situation. These barriers include the fuel cladding, the reactor coolant system, and the containment system. The performance of these fission product barriers will not be degraded by the implementation of this amendment. No safety margins will be impacted.

Based upon the preceding discussion, Duke Energy Corporation has concluded that the proposed amendment does not involve a significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 14 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendments until the expiration of the 14-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendments before the expiration of the 14-day notice period, provided that its final determination is that the amendments involve no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance. 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 April 23, 1999, the licensee may file a request for a hearing with respect

to issuance of the amendments to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the York County Library, 138 East Black Street, Rock Hill, South Carolina. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendments under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If the amendments are issued before the expiration of the 30-day hearing period, the Commission will make a final determination on the issue of no significant hazards consideration. If a hearing is requested, the final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendments and make them immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendments.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendments.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: 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 Ms, Lisa F. Vaughn, Legal Department (PB05E), Duke Energy Corporation, 422 South Church Street, Charlotte, North Carolina, 28201, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(I)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendments dated March 15, 1999, as supplemented by letter dated March 17, 1999, 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 York County Library, 138 East Black Street, Rock Hill, South Carolina.

Dated at Rockville, Maryland, this 18th day of March 1999.

For the Nuclear Regulatory Commission.

Peter S. Tam,

Senior Project Manager, Project Directorate II–2, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–7167 Filed 3–23–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–317 and 50–318]

Baltimore Gas and Electric Company, Calvert Cliffs Nuclear Power Plant; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirements of 10 CFR Part 50, Appendix R, Section III.J, Emergency lighting, to Baltimore Gas and Electric Company (the licensee) for operation of the Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, located in Calvert County, Maryland.

Environmental Assessment

Identification of the Proposed Action

The proposed exemption would grant relief from the requirements of 10 CFR Part 50, Appendix R, Section III.J, Emergency lighting, as follows:

(1) Security lighting, required by 10 CFR 73.55, powered by the diesel generator, would be used for exterior lighting in lieu of 8-hour battery powered emergency lighting units specified by Section III.J;

(2) Portable lights powered by an 8-hour battery supply, for actions in high radiation areas would be used in lieu of 8-hour battery powered emergency lighting units; and

(3) Helmet lanterns would be used inside of switchgear cabinets in lieu of 8-hour battery powered emergency lighting units.

The proposed action is in accordance with the licensee's application for exemption dated October 6, 1997, as supplemented by letter dated July 22, 1998.

The Need for the Proposed Action

The exemption is needed to reduce the hardships or costs associated with complying with Appendix R, Section III.J.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed action and concludes that the proposed action will not adversely affect safety.

The proposed action will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released off site, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential non-radiological impacts, the proposed action does not involve any historic sites. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, there are no significant non-radiological environmental impacts associated with the proposed action.

Accordingly, the Commission concludes that there are no significant environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (i.e., the ''no-action'' alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2.

Agencies and Persons Consulted

In accordance with its stated policy, on February 10, 1999, the staff consulted with the Maryland State official, Richard J. McLean of the Department of Natural Resources, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated October 6, 1997, as supplemented by letter dated July 22, 1998, which are available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Calvert County Library, Prince Frederick, Maryland.

Dated at Rockville, Maryland, this 18th day of March 1999.

For the Nuclear Regulatory Commission.

S. Singh Bajwa,

Director, Project Directorate I–1, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–7165 Filed 3–23–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–250 and 50–251]

Florida Power and Light Company, Turkey Point Units 3 and 4; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission or NRC) is considering issuance of an exemption from certain requirements of its regulations to Florida Power and Light Company (the licensee), holder of Facility Operating Licenses Nos. DPR–31 and DPR–41 for operation of Turkey Point Units 3 and 4, respectively, located in Dade County, Florida.

Environmental Assessment

Identification of Proposed Action

The proposed action would grant an exemption from certain requirements of Appendix R, ''Fire Protection Program for Nuclear Power Facilities Operating Prior to January 1, 1979,'' for Turkey Point Units 3 and 4. Specifically, the licensee requested an exemption from the requirements of Appendix R, Subsection III.G.2.a, for raceway fire barriers in the control building roof which includes fire zone 106R.

The proposed action is in accordance with the licensee's application dated November 2, 1998, as supplemented by a submittal dated February 11, 1999.

The Need for the Proposed Action

The Thermo-Lag fire barriers installed at Turkey Point Units 3 and 4 have a rating that does not meet the requirements specified in Subsection III.G.2.a. The proposed exemption is needed because compliance with the regulation would result in significant additional costs.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed action and concludes that the underlying purpose of the regulation, to provide reasonable assurance that at least one means of achieving and maintaining safe shutdown conditions will remain available during and after any postulated fire in the plant, will be met. This is based on the fact that the control building roof which includes fire zone 106R is considered to have a negligible contribution to the in situ combustible load and the gravel on the roof would resist fire from, and to, the roof. In addition the control building roof provides high resistance to severe fire and is equivalent to the standards of the Underwriter's Laboratory requirements for resistance to severe fire.

The proposed action will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released off site, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological impacts associated with the proposed action.

With regard to potential non-radiological impacts, the proposed action does not involve any historic sites. It does not affect non-radiological

plant effluents and has no other environmental impact. Therefore, there are no significant non-radiological environmental impacts associated with the proposed action.

Accordingly, the Commission concludes that there are no significant environmental impacts associated with the proposed action.

Alternative to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (i.e., the ''no-action'' alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statements related to operation of Turkey Point Units 3 and 4, dated July 1972.

Agencies and Persons Consulted

In accordance with its stated policy, on February 25, 1999, the NRC staff consulted with the Florida State official, Mr. William Passetti of the Bureau of Radiation Control, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's request dated November 2, 1998, as supplemented by a submittal dated February 11, 1999, which are available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Florida International University, University Park, Miami, Florida.

Dated at Rockville, Maryland, this 18th day of March 1999.

For the Nuclear Regulatory Commission.

Cecil O. Thomas,

Director, Project Directorate II–3, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–7162 Filed 3–23–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 72–2]

Virginia Electric and Power Company, Issuance of Environmental Assessment and Finding of No Significant Impact Regarding the Proposed Exemption From Requirements of 10 CFR Part 72

The U.S. Nuclear Regulatory Commission (NRC or the Commission) is considering issuance of an exemption, pursuant to 10 CFR 72.7, from the provisions of 10 CFR 72.72(d) to Virginia Electric and Power Company (Virginia Power or applicant). The requested exemption would allow Virginia Power to maintain a single set of spent fuel records at a records storage facility, that satisfies the requirements set forth in ANSI N45.2.9–1974, for the Independent Spent Fuel Storage Installation (ISFSI) at the Surry Power Station (Docket Nos. 50–280 and 50–281) in Surry County, Virginia.

Environmental Assessment (EA)

Identification of Proposed Action

By letter dated September 10, 1998, Virginia Power requested an exemption from the requirement in 10 CFR 72.72(d) which states in part that ''Records of spent fuel and high level radioactive waste in storage must be kept in duplicate. The duplicate set of records must be kept at a separate location sufficiently remote from the original records that a single event would not destroy both sets of records.'' The applicant proposes to maintain a single set of spent fuel records in storage at a records storage facility that satisfies the requirements set forth in ANSI N45.2.9–1974.

The proposed action before the Commission is whether to grant this exemption pursuant to 10 CFR 72.7.

Need for the Proposed Action

The applicant stated that, pursuant to 10 CFR 72.140(d), the Virginia Power Operational Quality Assurance (QA) Program Topical Report will be used to satisfy the QA requirements for the ISFSI. The QA Program Topical Report states that QA records are maintained in accordance with commitments to ANSI N45.2.9–1974. ANSI N45.2.9–1974 allows for the storage of QA records in a duplicate storage location sufficiently remote from the original records or in a records storage facility subject to certain provisions designed to protect the records from fire and other adverse conditions. The applicant seeks to streamline and standardize recordkeeping procedures and processes for the Surry Power Station and ISFSI spent fuel records. The applicant states that requiring a separate method of record storage for ISFSI records diverts resources unnecessarily.

ANSI N45.2.9–1974 provides requirements for the protection of nuclear power plant QA records against degradation. It specifies design requirements for use in the construction of record storage facilities when use of a single storage facility is desired. It includes specific requirements for protection against degradation mechanisms such as fire, humidity, and condensation. The requirements in ANSI N45.2.9–1974 have been endorsed by the NRC in Regulatory Guide 1.88, ''Collection, Storage and Maintenance of Nuclear Power Plant Quality Assurance Records,'' as adequate for satisfying the recordkeeping requirements of 10 CFR Part 50, Appendix B. ANSI N45.2.9–1974 also satisfies the requirements of 10 CFR 72.72 by providing for adequate maintenance of records regarding the identity and history of the spent fuel in storage. Such records would be subject to and need to be protected from the same types of degradation mechanisms as nuclear power plant QA records.

Environmental Impacts of the Proposed Action

Elimination of the requirement to store ISFSI records at a duplicate facility has no impact on the environment. Storage of records does not change the methods by which spent fuel will be handled and stored at the Surry Power Station and ISFSI and does not change the amount of any effluents, radiological or non-radiological, associated with the ISFSI.

Alternative to the Proposed Action

Since there are no environmental impacts associated with the proposed action, alternatives are not evaluated other than the no action alternative. The alternative to the proposed action would be to deny approval of the exemption and, therefore, not allow storage of ISFSI spent fuel records at a single qualified record storage facility. However, the environmental impacts of the proposed action and the alternative would be the same.

Agencies and Persons Consulted

On February 19, 1999, Mr. Les Foldesi from the State of Virginia Bureau of Radiological Health was contacted about the environmental assessment for the proposed action and had no comments.

Finding of no Significant Impact

The environmental impacts of the proposed action have been reviewed in accordance with the requirements set forth in 10 CFR Part 51. Based upon the foregoing EA, the Commission finds that the proposed action of granting an exemption from 10 CFR 72.72(d), so that Virginia Power may store spent fuel records at the ISFSI in a single record storage facility which meets the requirements of ANSI N45.2.9–1974, will not significantly impact the quality of the human environment. Accordingly, the Commission has determined that an environmental impact statement for the proposed exemption is not necessary.

The request for exemption was docketed under 10 CFR Part 72, Docket 72–2. For further details with respect to this action, see the application for an ISFSI license dated October 8, 1982, and the request for exemption dated September 10, 1998, which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW, Washington, DC 20555 and the Local Public Document Room at the College of William and Mary, Swem Library, Williamsburg, Virginia 23185.

Dated at Rockville, Maryland, this 12th day of March 1999.

For the Nuclear Regulatory Commission.

E. William Brach,

Director, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 99–7166 Filed 3–23–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law 97–415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97–415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from March 1, 1999, through March 12, 1999. The last biweekly notice was published on March 10, 1999 (64 FR 11958).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administration Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By April 23, 1999, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC and at the local public document room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for

leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

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 the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

Arizona Public Service Company, et al., Docket Nos. STN 50–528, STN 50–529, and STN 50–530, Palo Verde Nuclear Generating Station, Units Nos. 1, 2, and 3, Maricopa County, Arizona

Date of amendments request: December 16, 1998.

Description of amendments request: The proposed amendment would revise Technical Specification (TS) 3.8.1, ''AC Sources—Operating,'' and TS 3.3.7, ''Diesel Generator (DG)—Loss of Voltage Start (LOVS).'' The proposed amendment will (1) change Condition G of TS 3.8.1 to ensure that the appropriate actions will be taken to prevent double sequencing of safety-related loads, and (2) change TS 3.3.7 to ensure that the setpoint allowable values for the degraded voltage and the loss of voltage relays reflect the required function of the relays. *Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendment will change Condition G of Technical Specification 3.8.1. These changes will ensure that the appropriate actions will be taken to prevent double sequencing of safety-related loads. This change is required to assure the capability of the offsite circuits ''to effect a safe shutdown and to mitigate the effects of an accident'' in accordance with Regulatory Guide 1.93. The proposed amendment will also change the setpoint allowable values for the degraded voltage and the loss of voltage relays in Technical Specification Surveillance Requirement (SR) 3.3.7.3. The proposed changes do not involve any physical changes to plant equipment. The actions required by the TS amendment will identify when an offsite circuit does not meet its required capability and provides actions to restore the required capability. The proposed changes are intended to identify and correct the conditions (voltage and/or loading) required to prevent the possibility of a double sequencing event. Therefore, this change ensures that power will be supplied to the ESF [engineered safety feature] loads following a loss of offsite power event described in UFSAR [Updated Final Safety Analysis Report] 15.2.6.1. For other events discussed in the UFSAR, the electrical distribution system is an event mitigator. This change will ensure that the electrical distribution system will continue to meet this requirement. The proposed changes will not effect the function of the DG loss of voltage start as required by the design basis and safety analysis. Therefore, the proposed change does not involve a significant increase in the probability of an accident previously evaluated.

The proposed changes do not involve any physical changes to plant equipment. The proposed changes ensure that appropriate controls are in place to prevent a double sequencing event. The proposed changes consider the factors in preventing a double sequencing event such as pretrip voltage, load, number of units on line, and number of transmission lines in service. These are factors which could affect post trip voltage. The actions associated with this change will identify and mitigate the condition where an offsite circuit does not meet its required capability and, as such, do not result in new or revised accident sequences. The proposed changes will not effect the function of the DG loss of voltage start as required by the design basis and safety analysis. Therefore, the proposed change does not involve a significant increase in the consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed amendment will change Condition G of Technical Specification 3.8.1. These changes will ensure that the appropriate actions will be taken to prevent double sequencing of safety-related loads. This change is required to assure the capability of the offsite circuits ''to effect a safe shutdown and to mitigate the effects of an accident'' in accordance with Regulatory

Guide 1.93. The proposed amendment will also clarify the setpoint allowable values for the degraded voltage and the loss of voltage relays in Technical Specification Surveillance Requirement (SR) 3.3.7.3. The proposed changes do not change the operation of any system or equipment, nor do they create a new type of malfunction. The proposed changes prevent double sequencing and do not create the possibility of any other malfunction. The actions associated with this change will identify and mitigate the condition where an offsite circuit does not meet its required capability. The proposed changes will not effect the function of the DG loss of voltage start as required by the design basis and safety analysis. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed amendment will change Condition G of Technical Specification 3.8.1. These changes will ensure that the appropriate actions will be taken to prevent double sequencing of safety-related loads. This change is required to assure the capability of the offsite circuits ''to effect a safe shutdown and to mitigate the effects of an accident'' in accordance with Regulatory Guide 1.93. The proposed amendment will also change the setpoint allowable values for the degraded voltage and the loss of voltage relays in Technical Specification Surveillance Requirement (SR) 3.3.7.3. The proposed changes ensure that the units will be in conformance with GDC 17, Electric Power Systems (basis for TS 3.8.1). The required actions of the proposed change will ensure that the single failure analyses and safety analysis are maintained. The actions associated with this change will identify and mitigate the condition where an offsite circuit does not meet its required capability. The proposed changes ensure that the bases for the current TS are maintained. The proposed changes will not effect the function of the DG loss of voltage start as required by the design basis and safety analysis. Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on that review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendments request involve no significant hazards consideration.

Local Public Document Room location: Phoenix Public Library, 1221 N. Central Avenue, Phoenix, Arizona 85004.

Attorney for licensee: Nancy C. Loftin, Esq., Corporate Secretary and Counsel, Arizona Public Service Company, P.O. Box 53999, Mail Station 9068, Phoenix, Arizona 85072–3999.

NRC Project Director: William H. Bateman.

Carolina Power & Light Company, et al., Docket No. 50–400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina

Date of amendment request: February 26, 1999.

Description of amendment request: The proposed amendment would revise the Table Notations for Technical Specification (TS) Table 3.3–4, ''Engineered Safety Features Actuation System Instrumentation Trip Setpoints.'' Specifically, the time constants used in the lead-lag controller for Steam Line Pressure—Low (Table item 1.e.) are t_1 greater than or equal to 50 seconds and t_2 greater than or equal to 5 seconds. The proposed amendment would revise t_2 to less than or equal to 5 seconds. Also, the time constant used in the rate-lag controller for Negative Steam Line Pressure Rate—High (Table item 4.e.) is less than or equal to 50 seconds. The proposed amendment would revise this time constant to greater than or equal to 50 seconds.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Correcting the time constants will ensure conservative calibration of the Engineered Safety Feature Actuation System instrumentation. The proposed amendment will not introduce any new equipment or require existing equipment to function different from that previously evaluated in the Final Safety Analysis Report (FSAR) or TS. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Correcting the time constants will ensure conservative calibration of the Engineered Safety Feature Actuation System instrumentation. The proposed amendment will not introduce any new equipment or require existing equipment to function different from that previously evaluated in the Final Safety Analysis Report (FSAR) or TS. The proposed amendment will not create any new accident scenarios, because the change does not introduce any new single failures, adverse equipment or material interactions, or release paths. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed amendment does not involve a significant reduction in the margin of safety.

Correcting the time constants will ensure conservative calibration of the Engineered Safety Feature Actuation System instrumentation. Therefore, the proposed change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Cameron Village Regional Library, 1930 Clark Avenue, Raleigh, North Carolina 27605.

Attorney for licensee: William D. Johnson, Vice President and Senior Counsel, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602.

NRC Project Director: Cecil Thomas.

Consumers Energy Company, Docket No. 50–255, Palisades Plant, Van Buren County, Michigan

Date of application for amendment: March 26, 1997.

Brief description of amendment: The amendment revises modifies Technical Specification sections 3.6 and 4.5 by removing the list of containment isolation valves in accordance with Generic Letter 91–08, ''Removal of Components Lists from Technical Specifications,'' dated May 6, 1991, and by revising requirements related to containment pressure and containment temperature. Additionally, several editorial changes are made to emulate the format and content of NUREG–1432, ''Standard Technical Specifications, Combustion Engineering Plants.''

Date of issuance: February 22, 1999.

Effective date: February 22, 1999.

Amendment No.: 184.

Facility Operating License No. DPR–20. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: December 17, 1997 (62 FR 66136)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 22, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Van Wylen Library, Hope College, Holland, Michigan 49423.

Consumers Energy Company, Docket No. 50–255, Palisades Plant, Van Buren County, Michigan

Date of amendment request: September 3, 1997.

Description of amendment request: The proposed amendment includes the following changes to the station technical specification (TS):

(a) TS Action Statement 3.14a is replaced by a revised condition description for TS Action Statement 3.17.1.6 in the instrumentation systems section. Also, the maximum control room temperature at which a shutdown must be initiated is revised from 120 °F [degrees Fahrenheit] to 90 °F, and a time limit for reaching the hot shutdown condition is specified;

(b) TS 3.14b is replaced with two limiting conditions for operation (LCOs), 3.14.1 and 3.14.2, addressing, respectively, the filtration and cooling functions of the CRHVAC [control room heating, ventilation, and air conditioning] system. These proposed LCOs emulate the standard TS (NUREG 1432) for control room ventilation;

(c) TS Table 4.2.3 surveillance requirement (SR) number 3, verification of control room temperature, is moved to SR Table 4.17.1, for the reactor protection system (RPS); and

(d) other administrative changes.

The licensee classified each change as either administrative or more restrictive. An administrative change is editorial in nature, involves only movement of requirements within the TS without affecting their technical content, or clarifies existing TS requirements. A more restrictive change adds new requirements, or revises existing requirements resulting in more conservative or additional operational restrictions.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below:

1. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed changes to TS 3.14a and TS 3.14b constitute either new, or more restrictive requirements that provide additional assurance that equipment conforms to the plant design basis and will operate reliably when called upon. These changes represent additional restrictions on plant operation that enhance safety and are consistent with the standard TS. The proposed change to TS Table 4.2.3 of moving SR item number 3 to TS Table 4.17.1, and other administrative changes are editorial in nature or involve the reorganization or reformatting of TS requirements without affecting technical content or operational restrictions. The proposed changes do not result in any substantive change in operating requirements or the intent of these requirements, and are consistent with the Commission's regulations. Therefore, these changes cannot involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Do the proposed changes create the possibility of a new or different kind of accident from any previously evaluated?

The proposed changes to TS 3.14a and TS 3.14b constitute either new, or more restrictive requirements that provide additional assurance that equipment conforms to the plant design basis and will operate reliably when called upon. These changes represent additional restrictions on plant operation that enhance safety and are consistent with the standard TS. The proposed change to TS Table 4.2.3 of moving SR number 3 to TS Table 4.17.1, and other administrative changes are editorial in nature or involve the reorganization or reformatting of TS requirements without affecting technical content or operational restrictions. The proposed changes do not result in any substantive change in operating requirements or the intent of these requirements, and are consistent with the Commission's regulations. Therefore, these changes cannot create the possibility of a new or different kind of accident from any previously evaluated.

3. Do the proposed changes involve a significant reduction in a margin of safety?

The proposed changes to TS 3.14a and TS 3.14b constitute either new, or more restrictive requirements that provide additional assurance that equipment conforms to the plant design basis and will operate reliably when called upon. These changes represent additional restrictions on plant operation that enhance safety and are consistent with the standard TS. The proposed change to TS Table 4.2.3 of moving SR number 3 to TS Table 4.17.1, and other administrative changes are editorial in nature or involve the reorganization or reformatting of TS requirements without affecting technical content or operational restrictions. The proposed changes do not result in any substantive change in operating requirements or the intent of these requirements, and are consistent with the Commission's regulations. Therefore, these changes cannot involve a significant reduction in a margin of safety.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Van Wylen Library, Hope College, Holland, Michigan 49423–3698.

Attorney for licensee: Arunas T. Udrys, Esquire, Consumers Energy Company, 212 West Michigan Avenue, Jackson, Michigan 49201.

NRC Project Director: Cynthia A. Carpenter.

Duke Energy Corporation, Docket Nos. 50–269, 50–270, and 50–287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina

Date of amendment request: March 1, 1999.

Description of amendment request: The proposed amendments would revise Oconee Nuclear Station, Units 1, 2, and 3 Improved Technical Specification (ITS) 3.3.8 to only require two channels for the reactor coolant system hot leg temperature function. The current TSs require two channels per loop. This requirement was incorrectly specified during the ITS conversion.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated:

The proposed change modifies ITS Table 3.3.8–1 to only require two channels for RCS [Reactor Coolant System] Hot Leg Temperature Function. These instruments provide indication only and are not considered as initiators of any analyzed event. The proposed change does not involve a physical alteration of the plant. No new or different equipment is being installed, and no installed equipment is being operated in a new or different manner. No set points for parameters which initiate protective or mitigative action are being changed. Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any kind of accident previously evaluated:

The proposed change does not involve a physical alteration of the plant. No new or different equipment is being installed, and no

installed equipment is being operated in a new or different manner. No set points for parameters which initiate protective or mitigative action are being changed. As a result, no new failure modes are being introduced. Therefore, this proposed amendment will not create the possibility of any new or different kind of accident.

3. Involve a significant reduction in a margin of safety.

The margin of safety for PAM [post accident monitoring] instrumentation is based on the availability and capability of the instrumentation to provide the required operator information. The proposed change maintains requirements within the safety analyses and licensing basis and has no effect on the availability and capability of the PAM function. Therefore, the change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Oconee County Library, 501 West South Broad Street, Walhalla, South Carolina.

Attorney for licensee: Ann W. Cottington, Winston and Strawn, 1200 17th Street, NW., Washington, DC.

NRC Project Director: Herbert N. Berkow.

Duke Energy Corporation, Docket Nos. 50–269, 50–270, and 50–287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina

Date of amendment request: March 1, 1999.

Description of amendment request: The proposed amendments to Improved Technical Specification (ITS) 3.9, ''Refueling Operations,'' Subsection 3.9.3, ''Containment Penetrations,'' Limiting Condition for Operation 3.9.3.b would add a Note to state that the emergency air lock door is not required to be closed when it is sealed with a temporary cover plate. The temporary cover plate contains penetrations that are used for such refueling outage services as cables, pneumatic tubing, and hoses.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

This proposed change has been evaluated against the standards in 10 CFR 50.92 and has been determined to involve no significant hazards, in 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?

The proposed change allows the use of a temporary cover plate as a seal for the emergency air lock during refueling operations in lieu of an air lock door. Duke [Duke Energy Corporation] analyses for Oconee Nuclear Station (ONS) does not credit containment closure. Therefore, use of the temporary cover plate does not affect offsite doses, which were previously calculated to be well within 10 CFR 100 limits. As such, the proposed change does not involve a significant increase in the probability or consequences of an accident.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The fuel handling accident inside containment analyses discussed in the Updated Final Safety Analysis Report section 15.11 bound the proposed change. No new or different type of accident will occur because of the temporary cover plate placement.

3. Involve a significant reduction in a margin of safety.

Placing the temporary cover plate in the emergency air lock will still meet the intent of containment closure. The building pressure does not increase during a fuel handling accident and fission products will be contained. The fuel handling accident inside containment analyses does not credit containment closure for reducing offsite dose. As such, the proposed change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Oconee County Library, 501 West South Broad Street, Walhalla, South Carolina.

Attorney for licensee: Anne W. Cottington, Winston and Strawn, 1200 17th Street, NW., Washington, DC.

NRC Project Director: Herbert N. Berkow.

Florida Power and Light Company, Docket Nos. 50–250 and 50–251, Turkey Point Plant Units 3 and 4, Dade County, Florida

Date of amendment request: February 24, 1999.

Description of amendment request: The proposed amendments would change Technical Specification (TS) 3/4.7.4 to remove the restriction to monitor the Ultimate Heat Sink (UHS) temperature only in the Intake Cooling Water (ICW) bay and prior to the ICW pumps. This change would permit the option of monitoring the UHS temperature after the ICW pumps but prior to the component cooling water heat exchangers, which is considered to be equivalent to temperature monitoring before the ICW pumps.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The method of monitoring the Ultimate Heat Sink temperature is not considered in, and has no effect on, the probability of any type of accident initiating sequence. The proposed changes will permit other means of monitoring the Ultimate Heat Sink that have been evaluated to be equivalent to the current method permitted. As the monitoring will continue to be performed by equal means, the consequences of any accident previously evaluated will not be affected.

2. Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change will permit other means of monitoring the Ultimate Heat Sink temperature, which will be equal to the methods currently employed. The continued monitoring of this variable by equivalent means cannot create the possibility of a new or different type of accident.

3. Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety.

The Ultimate Heat Sink temperature is an input assumption used in the accident analysis and in evaluation of component design. This temperature limit is not being altered by this change, only the permissible means of monitoring this variable. As any new methods employed are expected to be equivalent to those currently used, no reduction in any margin of safety will result.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Florida International University, University Park, Miami, Florida 33199.

Attorney for licensee: M.S. Ross, Attorney, Florida Power & Light, P.O. Box 14000, Juno Beach, Florida 33408–0420.

NRC Project Director: Cecil O. Thomas.

GPU Nuclear, Inc., et al., Docket No. 50–289, Three Mile Island Nuclear Station, Unit No. 1, Dauphin County, Pennsylvania

Date of amendment request: February 2, 1999.

Description of amendment request: The proposed amendment revises the Technical Specifications (TS) to expand the scope of systems and test requirements considered under TS 4.5.4 ''Engineered Safeguards Feature (ESF) Systems Leakage,'' and increases the maximum allowable leakage for those portions of the ESF system outside containment. The proposed amendment also includes revised the Bases for TS 3.15.3, ''Auxiliary and Fuel Handling Building Air Treatment System,'' to clarify system design requirements and accident analysis considerations.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated. No physical modifications which would change structures, systems or components are proposed by this TSCR [technical specification change request] for surveillance changes in Technical Specification 4.5.4 and its Bases. The proposed increase in the ESF Systems leakage rate acceptance limit has no effect on the performance of ESF systems during a DBA [design basis accident]. The proposed changes are supported by a revised MHA [maximum hypothetical accident] dose calculation using updated X/Q values and calculation assumptions. The MHA dose consequence analysis yields dose results that are below the 10 CFR 100 guidelines for both the EAB [exclusion area boundary] and LPZ [low population zone]. The calculated Control Room Habitability Evaluation does not exceed the permissible annual occupational exposure limit of 50 Rem to the thyroid as specified in 10 CFR 20.1201(a)(ii). In addition, the potential thyroid exposure can be mitigated by the availability of self-contained breathing apparatus and potassium iodide. Therefore, the changes would not involve a significant increase in the consequences of accidents previously evaluated.

2. Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any previously evaluated. This TSCR does not involve any physical modifications that would affect structures, systems, or components, nor does it involve any changes in plant operation.

3. Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety. This TSCR does not involve changes to the Technical Specification defined Safety Limits, Limiting Conditions for Operation, and does not involve any change to safety system setpoints for operation. Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Law/Government Publications Section, State Library of Pennsylvania, (Regional Depository) Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, PA 17105

Attorney for licensee: Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: Elinor G. Adensam.

Northern States Power Company, Docket No. 50–263, Monticello Nuclear Generating Plant, Wright County, Minnesota

Date of amendment request: February 12, 1999.

Description of amendment request: The proposed amendment would change the Technical Specifications (TS) to (1) allow reactor vessel hydrostatic and leakage tests without maintaining primary containment integrity, (2) establish a limit and a surveillance requirement on reactor coolant activity when reactor coolant temperature is above 212°F, the reactor is not critical, and primary containment has not been established, and (3) correct a punctuation error.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes do not increase the probability of an accident since reactor vessel hydrostatic and leakage tests would be performed with the reactor vessel nearly water solid, at nominal operating pressure, not critical and at low decay heat values which minimizes the energy stored in the reactor vessel. Under this proposed change a limit on reactor coolant activity is established that provides adequate assurance that the consequences of a large primary system break during reactor vessel hydrostatic and leakage test conditions will be conservatively bounded by the consequences of a postulated main steam line break outside of primary containment. Low pressure emergency core cooling systems are required to be operable during reactor vessel hydrostatic and leakage test providing assurance that adequate core cooling can be achieved to preclude fuel failures and subsequent increases in reactor coolant activity in the event of a large primary system break. The reduced stored energy in the reactor vessel and proposed limit on reactor coolant activity ensures there is no increase in the probability or consequences of an accident previously evaluated.

The proposed amendment will not create the possibility of a new or different kind of accident from any accident previously analyzed.

The proposed changes do not introduce any new accident initiators or failure mechanisms since the changes do not involve any changes to the structures, systems, or components. They also do not involve any change to the operation of systems, and alter procedures only to the extent that 212°F may be exceeded during reactor vessel hydrostatic and leakage testing without maintaining primary containment integrity. Without maintaining primary containment integrity, a large primary system break during a reactor vessel hydrostatic or leakage test would result in the same kind of accident as would a main steam line break outside primary containment during normal operation. Therefore, the proposed TS change does not create the possibility of a new or different kind of accident, from any accident previously evaluated.

The proposed amendment will not involve a significant reduction in the margin of safety.

Since reactor vessel hydrostatic and leakage tests are performed nearly water solid, at nominal operating pressure, not critical and at low decay heat values, the stored energy in the reactor vessel during testing will be low. Under these conditions, the potential for failed fuel and a subsequent increase in coolant activity is minimized. Therefore, the proposed Technical Specification change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. In addition, correction to the punctuation error is strictly a grammatical change and has no effect on the three standards of 10 CFR 50.92(c). Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and

Trowbridge, 2300 N Street, NW, Washington, DC 20037.

NRC Project Director: Cynthia A. Carpenter.

Public Service Electric & Gas Company, Docket Nos. 50–272 and 50–311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of amendment request: February 8, 1999.

Description of amendment request: The proposed amendments would revise Technical Specification 4.5.3.2.b to allow the option of using closed and disabled automatic valves to provide the necessary isolation function when performing safety injection and charging pump testing in Modes 4, 5, and 6 (hot shutdown, cold shutdown, and refueling) for low temperature over pressurization protection.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Will not involve a significant increase in the probability or consequences of an accident previously evaluated.

In Mode 4 with the RCS [reactor coolant system] coolant temperature less than 312 °F or in Modes 5 and 6 there is a potential risk of low temperature overpressurization. Mass additions of coolant by the safety injection and charging pumps could cause such an event to the extent that these pump flows exceed the ability of a single over pressure protection relief valve to protect the system. In order to eliminate this potentiality provisions are made to allow a maximum of one pump to be in service with the other pumps disabled except for testing. Further provisions are made to assure that a pump being tested can not inject into the vessel. The proposed change merely adds an alternate method of providing this assurance in addition to that currently provided by closing the manual discharge valves. The proposed change offers an equivalent means of affording the required protection.

Based upon the above, the proposed change will not increase the probability or consequences of an accident previously analyzed.

2. Will not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed changes do not require any change in the operation of the plant. A minor configuration change is involved in that a[ ] disabled automatic valve in the flow path will be used in lieu of the manual valve to provide protection. Specifically, no new hardware is being added to the plant as part of the proposed change, no existing equipment is being modified, and no significant changes in operations are being introduced. Therefore, these changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Will not involve a significant reduction in a margin of safety.

The proposed change will not alter any assumptions, initial conditions, or results of any accident analyses. The proposed change maintains the level of protection. The change will, therefore, not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Salem Free Public Library, 112 West Broadway, Salem, NJ 08079.

Attorney for licensee: Jeffrie J. Keenan, Esquire, Nuclear Business Unit—N21, P.O. Box 236, Hancocks Bridge, NJ 08038.

NRC Project Director: Elinor G. Adensam.

Rochester Gas and Electric Corporation, Docket No. 50–244, R. E. Ginna Nuclear Power Plant, Wayne County, New York

Date of amendment request: March 1, 1999.

Description of amendment request: The proposed amendment would revise the Ginna Station Improved Technical Specifications battery cell parameters limit for specific gravity Surveillance Requirement (SR) 3.8.6.3 and SR 3.8.6.6.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Operation of Ginna Station in accordance with the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated. The change is only to correct an error in the determination of the minimum limiting value for specific gravity of the station batteries. This does not increase the probability of an accident previously evaluated since the battery specific gravity is only a measure of the state of charge of the battery and the batteries themselves are not an accident initiator. The proposed minimum value for specific gravity, based on the NUREG–1431 guidance, gives a higher assurance that the battery has sufficient capacity. Therefore, the probability or consequences of an accident previously evaluated is not significantly increased.

(2) Operation of Ginna Station in accordance with the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed change does not involve a physical alteration of the plant (i.e. no new or different type of equipment will be added) or changes in the methods governing normal plant operation. The change only involves implementing a more conservative minimum limiting value for the battery cell parameter of specific gravity. Therefore, the possibility for a new or different kind of accident from any accident previously evaluated is not created.

(3) Operation of Ginna Station in accordance with the proposed change does not involve a significant reduction in a margin of safety. The proposed change only corrects an error in the determination of the limiting value for specific gravity. The error is being corrected by using a more conservative value as determined by the guidance of NUREG–1431. Therefore, this change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room Location: Rochester Public Library, 115 South Avenue, Rochester, New York 14610.

Attorney for licensee: Nicholas S. Reynolds, Winston & Strawn, 1400 L Street, NW., Washington, DC 20005.

NRC Project Director: S. Singh Bajwa.

South Carolina Electric & Gas Company (SCE&G), South Carolina Public Service Authority, Docket No. 50–395, Virgil C. Summer Nuclear Station, Unit No. 1, Fairfield County, South Carolina

Date of amendment request: February 18, 1999.

Description of amendment request: The proposed amendment would revise Virgil C. Summer Nuclear Station (VCSNS) Technical Specification (TS) 3/4.4.9 Reactor Coolant System Pressure/Temperature Limits to incorporate the new Pressure/Temperature (PT) Limits curves consistent with reactor vessel specimen analysis results. Additionally, the proposed amendment would revise the Pressure/Temperature Limits Bases section to accurately reflect current industry standards and regulations.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed changes revise the Pressure/Temperature Limits Curves to provide curves that reflect the results of the analysis performed on reactor vessel surveillance

specimen W. This analysis was performed using NRC approved methodology as documented in WCAP 14040-NP-A, dated January, 1996. These curves provide the limits for operation of the Reactor Coolant System during heat up, cool down, criticality, and hydrotesting. The limits protect the reactor vessel from brittle fracture by separating the region of acceptable operation from the region where brittle fracture is postulated to occur. Failure of the reactor vessel is not a VCSNS design basis accident, and, in general, reactor vessel failure has a low probability of occurrence and is not considered in the safety analysis.

Therefore, the change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed changes revise the Pressure/Temperature Limits Curves, Section 3/4.4.9, to incorporate the results of the analysis performed on reactor vessel specimen W. There are no plant design changes or significant changes in any operating procedures. This change adjusts the heat up and cool down curves to reflect the shift in nil-ductility reference temperature of the reactor vessel as a result of neutron embrittlement. Therefore, the change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does this change involve a significant reduction in margin of safety? The proposed changes revise the Pressure/Temperature Limits Curves, Section 3/4.4.9, to incorporate the results of the analysis performed on reactor vessel specimen W. The new PT curves ensure that the 10 CFR 50 Appendix G, requirements are not exceeded during normal operation including Reactor Coolant System transients during heat up, cool down, criticality, and hydrotesting. The new PT curves were prepared, using approved NRC methodology, for a projected reactor vessel neutron exposure of 32 EFPY [effective full power years].

The new curves shift to more conservative operating limitations, thus providing increased margin against non-ductile fractures. Since administrative limits remain in place to ensure that 10 CFR 50 Appendix G limits are not challenged, the margin of safety described in the TS Bases is not reduced by the proposed change. Therefore, the change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Fairfield County Library, 300 Washington Street, Winnsboro, SC 29180.

Attorney for licensee: Randolph R. Mahan, South Carolina Electric & Gas Company, Post Office Box 764, Columbia, South Carolina 29218.

NRC Project Director: Herbert N. Berkow.

Southern California Edison Company, et al., Docket Nos. 50–361 and 50–362, San Onofre Nuclear Generating Station, Unit Nos. 2 and 3, San Diego County, California

Date of amendment requests: May 8, 1996, as supplemented by letter dated January 13, 1999.

Description of amendment requests: The January 13, 1999, supplemental letter added an additional change to the technical specifications (TS) to incorporate an additional restriction to the time required to close containment when reactor coolant system (RCS) water level is reduced during a refueling outage. This additional restriction adds a limitation that containment must be able to be closed within the calculated time to boil, if it is less than the current four hour requirement. The January 13, 1999, letter supplements the staff's proposed no significant hazards consideration determination evaluation that was published on September 11, 1996 (61 FR 47978).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The licensee's analysis of the issue of no significant hazards consideration on the supplemental change is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Item 6 conservatively restricts the completion time to ensure containment closure is achieved prior to the water in the cavity boiling, in the event of a Loss of Shutdown Cooling. This restriction is already a self imposed requirement at San Onofre Units 2 and 3. Incorporating it in the Technical Specification only serves to highlight the importance of this requirement.

This change captures all periods of time when the time to boil following a Loss of Shutdown Cooling is less than 4 hours. Having this requirement cannot initiate an accident. However, this requirement reduces the consequences of a Loss of Shutdown Cooling Accident when the time to boil is less than 4 hours.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Item 6 conservatively restricts the completion time to ensure containment closure is achieved prior to the water in the cavity boiling, in the event of a Loss of Shutdown Cooling. This restriction is already a self imposed requirement at San Onofre Units 2 and 3. Incorporating it in the Technical Specification only serves to highlight the importance of this requirement.

This restriction cannot initiate an accident.

3. The proposed change does not involve a significant reduction in a margin of safety.

Item 6 conservatively restricts the completion time to ensure containment closure is achieved prior to the water in the cavity boiling, in the event of a Loss of Shutdown Cooling. This restriction is already a self imposed requirement at San Onofre Units 2 and 3. Incorporating it in the Technical Specification only serves to highlight the importance of this requirement.

This change increases the margin of safety provided by the Technical Specification by specifying that the containment must be closed within 4 hours or within the calculated time to boil, whichever is less. This change revises the Technical Specification to specifically recognize the importance of ensuring containment closure is achieved prior to boiling in the reactor vessel, upon a loss of shutdown cooling.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Local Public Document Room location: Main Library, University of California, P.O. Box 19557, Irvine, California 92713.

Attorney for licensee: Douglas K. Porter, Esquire, Southern California Edison Company, P. O. Box 800, Rosemead, California 91770.

NRC Project Director: William H. Bateman.

Southern California Edison Company, et al., Docket Nos. 50–361 and 50–362, San Onofre Nuclear Generating Station, Unit Nos. 2 and 3, San Diego County, California

Date of amendment requests: December 22, 1998.

Description of amendment requests: The proposed amendment would modify the technical specifications (TS) to add a reference to allow use of Westinghouse laser-welded steam generator (SG) tube sleeving. The proposed amendment also provides typographical and editorial corrections.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Steam generator tubes, tube plugging, and tube failures are considered in the analysis of

accidents in the Updated Final Safety Analysis Report (UFSAR). The steam generator tube rupture accident analysis considered the failure of a steam generator tube. Also, inadvertent opening of a steam generator dump valve (IOSGDV), loss of condenser vacuum (LOCV), loss of coolant accidents (LOCAs), and feed water line break (FWLB) accident analyses carry assumptions regarding steam generator tube plugging. In each case, the addition of steam generator tube sleeves to repair defective tubes will not change the probability or consequences of any accident previously evaluated.

The sleeve configurations have been designed, analyzed, and tested in accordance with the American Society of Mechanical Engineers (ASME) code requirements, and mechanical testing has shown that the sleeve and sleeve joints provide margin above acceptance limits. Ultrasonic testing (UT) and eddy current testing (ECT) are used to verify the adequacy of welds. Tests have demonstrated that tube collapse will not occur due to postulated LOCA loadings.

The probability or consequences of any accident previously evaluated is not increased because any leakage through the sleeve assembly is fully bounded by the existing steam generator tube rupture analysis included in the San Onofre Unit 2 and 3 Updated Final Safety Analysis Report. Additionally, any reactor coolant flow restriction from sleeving is addressed by a ratio of number of sleeved tubes to be equal to a plugged tube.

Therefore, the proposed sleeving repair process will not involve an increase in the probability or consequences of any previously evaluated accident.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The sleeves are captured within the steam generator tubes by hard rolling and welding and as such are not able to physically affect other parts of the system. The failure of a sleeve is identical to the failure of the parent tube which has been previously analyzed.

The use of a sleeve to span the area of degradation of the steam generator tube restores the structural and leakage integrity of the tubing to meet the original design requirements. Structural analysis of the sleeve assembly shows that the requirements of the ASME code are met. Mechanical testing has demonstrated that margin exists above the original tube design criteria. Any hypothetical accident as a result of any degradation in a sleeved tube would be bounded by the existing steam generator tube rupture accident analysis.

Therefore, operation of the facility in accordance with proposed changes does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The use of sleeves to repair degraded steam generator tubing will maintain the integrity of the tube bundle commensurate with the ASME Code and draft Regulatory Guide (RG) 1.121 margin requirements for original tubing. Sleeves are components which are part of the reactor coolant pressure boundary and meet the requirements for Class 1 components in Section III of the ASME Boiler and Pressure Vessel Code. The primary to secondary pressure boundary will be maintained to the same margins as the original tubes under normal and postulated accident conditions. The safety margins used in the verification of the strength of the sleeve assembly are consistent with the safety factors in the ASME Boiler and Pressure Vessel Code used in steam generator design. Further, a test program has been conducted by Westinghouse which demonstrated the integrity of the lower hard rolled joint design and its capability to withstand the design loads.

Therefore, operation of the facility with the proposed changes will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Local Public Document Room location: Main Library, University of California, P.O. Box 19557, Irvine, California 92713.

Attorney for licensee: Douglas K. Porter, Esquire, Southern California Edison Company, P. O. Box 800, Rosemead, California 91770.

NRC Project Director: William H. Bateman.

Tennessee Valley Authority, Docket Nos. 50–327 and 50–328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of application for amendments: February 26, 1999 (TS 98–08).

Brief description of amendments: The proposed amendments would change the Sequoyah (SQN) Technical Specifications (TS) by relocating TS 3.7.6, ''Flood Protection Plan,'' and the associated bases to the SQN Technical Requirements Manual (TRM). This change does not alter the current requirements for implementation or surveillance testing of the Flood Protection Plan and future revisions of this plan will require an evaluation in accordance with 10 CFR 50.59.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), Tennessee Valley Authority (TVA), the licensee, has provided its analysis of the issue of no significant hazards consideration, which is presented below:

A. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed revision to the TS relocates the requirements for SQN flood protection without changing the current requirements. This administrative relocation of the requirements will not increase the possibility of an accident.

The capability of the Flood Protection Plan will continue to provide the same function. Changes to the relocated requirements will be processed, in accordance with 10 CFR 50.59, to ensure the Flood Protection Plan will be properly maintained. Therefore, the proposed relocation of the flood protection requirements will not increase the probability or consequences of an accident previously evaluated.

The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The SQN Flood Protection Plan is used to mitigate the effects of a flooding event at SQN. This plan would not be the initiator of any new or different kind of accident. The capability of the Flood Protection Plan will continue to provide the same function. Changes to the relocated requirements will be processed, in accordance with 10 CFR 50.59, to ensure the Flood Protection Plan will be properly maintained. The proposed change does not alter the current functions of SQN's Flood Protection Plan; therefore, this proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

B. The proposed amendment does not involve a significant reduction in a margin of safety.

The requirements for SQN's flood protection are unchanged by the proposed relocation of the requirements to the SQN TRM. The function of the Flood Protection Plan and surveillance requirements to ensure implementation of the plan remains unchanged. Any future changes to these requirements will be evaluated, in accordance with 10 CFR 50.59, to ensure acceptability and NRC review as required. Accordingly, the proposed change will not result in a reduction in a margin of safety.

The NRC has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 10H, Knoxville, Tennessee 37902.

NRC Project Director: Cecil O. Thomas.

Tennessee Valley Authority, Docket Nos. 50–327 and 50–328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of application for amendments: February 26, 1999 (TS 99–02).

Brief description of amendments: The proposed amendments would change the Sequoyah (SQN) Technical Specifications (TS) to provide for consistency when exiting the action statements associated with the Emergency Diesel Generators (D/Gs). The Tennessee Valley Authority (TVA) inadvertently omitted revising Action Statements c, d, and e associated with TS 3.8.1.1 in Revision 1 to TS Change 96–08, addressing the D/G allowed outage time, submitted to the NRC staff on October 8, 1998.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), TVA has provided its analysis of the issue of no significant hazards consideration, which is presented below:

A. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

This proposed revision provides for consistency and removes contradictions within the action statements associated with TS 3.8.1.1. Additionally, the proposed revision will not result in any change in the design, maintenance or operation of the associated plant equipment nor will it result in deviation from the actions presently approved by the staff for SQN's response to the associated LCOs [Limiting Conditions for Operation]. The deletion of the defined portion of the requirements associated with the restoration of offsite power sources in Action Statements c and d does not result in any change to SQN's response to the stated condition since this requirement remains unchanged in Action Statement a.

The deletion of the requirements associated with the restoration of 4 diesel generator (D/G) sets within 72 hours from Action Statements c and e provides for a consistent allowed outage time of 7 days for the loss of a D/G set as previously approved by the staff in a safety evaluation issued on December 16, 1998. Therefore, the proposed amendment does not involve an increase in the probability or consequences of an accident previously evaluated.

B. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change provides for consistency and removes contradictions within the action statements associated with TS 3.8.1.1. Additionally, the proposed revision will not result in any change in the design, maintenance or operation of the associated plant equipment nor will it result in deviation from the actions presently approved by the staff for SQN's response to the associated LCOs. Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

C. The proposed amendment does not involve a significant reduction in a margin of safety.

The proposed change provides for consistency and removes contradictions within the action statements associated with TS 3.8.1.1. Additionally, the proposed revision will not result in any change in the design, maintenance or operation of the associated plant equipment nor will it result in deviation from the actions presently approved by the staff for SQN's response to the associated LCOs. Therefore, the proposed amendment does not involve a reduction in a margin of safety.

The NRC has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 10H, Knoxville, Tennessee 37902.

NRC Project Director: Cecil O. Thomas.

Previously Published Notices of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Northeast Nuclear Energy Company, Docket No. 50–245, Millstone Nuclear Power Station, Unit 1, New London County, Connecticut

Date of application of amendment: December 4, 1998, January 18, and January 19, 1999.

Brief description of amendment: The proposed amendment would modify the staffing and training requirements to allow the use of Certified Fuel Handlers to meet plant staffing requirements.

Date of publication individual notice in **Federal Register**: December 29, 1998 (63 FR 71657).

Expiration date of individual notice: January 28, 1999.

Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, Connecticut, and the Waterford Library, ATTN: Vince Juliano, 49 Rope Ferry Road, Waterford, Connecticut.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document rooms for the particular facilities involved.

Baltimore Gas and Electric Company, Docket No. 50–318, Calvert Cliffs Nuclear Power Plant, Unit No. 2, Calvert County, Maryland

Date of application for amendment: July 20, 1998, as supplemented December 4, 1998, and December 23, 1998.

Brief description of amendment: The amendment permits a one-time change to the Technical Specification (TS) Bases for TS 3.8.2 for Calvert Cliffs Nuclear Power Plant, Unit No. 2 and provides approval of the licensee's analysis of unreviewed safety questions as described in 10 CFR 50.59. The change allows Baltimore Gas and Electric Company to provide alternate cooling to the Unit 2 emergency diesel generators (EDGs) during their replacement of the Unit 2 service water (SRW) heat exchangers in the 1999 refueling outage since the normal SRW cooling would be unavailable. The licensee proposes to provide the 2A EDG with cooling water from the Unit 1 SRW system and to provide the 2B EDG with cooling water from an independent external cooling system during the replacement work.

Date of issuance: March 8, 1999.

Effective date: As of the date of its issuance to be implemented during the Calvert Cliffs Unit No. 2 spring 1999 refueling outage.

Amendment No.: 205.

Facility Operating License No. DPR–69: Amendment revised the Technical Specifications Bases.

Date of initial notice in **Federal Register**: August 26, 1998 (63 FR 45523) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 8, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Calvert County Library, Prince Frederick, Maryland 20678.

Consolidated Edison Company of New York, Docket No. 50–247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of application for amendment: October 9, 1998.

Brief description of amendment: The amendment revised Section 6.0 to Technical Specifications to change the membership of the Nuclear Facility Safety Committee and corrected other typographical errors.

Date of issuance: March 8, 1999.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 199.

Facility Operating License No. DPR–26: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: December 16, 1998 (63 FR 69337).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 8, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610.

Detroit Edison Company, Docket No. 50–341, Fermi 2, Monroe County, Michigan

Date of application for amendment: April 9, 1998 (NRC–98–0071).

Brief description of amendment: The amendment revises Technical Specification (TS) 3.7.1.2, ''Emergency Equipment Cooling Water System,'' Action a, and TS 3.8.1.1, ''A.C. Sources—Operating,'' Action c, to be consistent with the actions required for inoperable oxygen monitoring instrumentation in TS 3.3.7.5, ''Accident Monitoring Instrumentation.'' The existing ''**'' footnote to TS 3.7.1.2, Action a, is modified and a ''*'' footnote is added to TS 3.8.1.1, Action c.

Date of issuance: March 3, 1999.

Effective date: March 3, 1999, with full implementation within 30 days.

Amendment No.: 132.

Facility Operating License No. NPF–43: Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register**: September 23, 1998 (63 FR 50937).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 3, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Monroe County Library System, Ellis Reference and Information Center, 3700 South Custer Road, Monroe, Michigan 48161.

Entergy Gulf States, Inc., and Entergy Operations, Inc., Docket No. 50–458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana

Date of amendment request: September 23, 1998.

Brief description of amendment: The amendment changes Division III battery specific gravity acceptance criteria outlined in River Bend Station (RBS) Technical Specifications (TS). The change is required as a result of Division III battery system modifications scheduled to be implemented during refueling outage RF–8, beginning April 3, 1999. During this time, the current Division III battery will be replaced with a new battery having a greater capacity rating. The new battery has a nominal specific gravity of 1.215 at 77°F in contrast to the existing Division III battery supplied with a nominal specific gravity of 1.210 at 77°F. Since TS Section 3.8.6, Table 3.8.6–1 values for specific gravity are based upon the manufacturer's nominal specific gravity, these values were updated to reflect the changes.

Date of issuance: March 3, 1999.

Effective date: The license amendment is effective upon the date of issuance and shall be implemented within 90 days.

Amendment No.: 103.

Facility Operating License No. NPF–47: The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: November 18, 1998 (63 FR 64111).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 3, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Government Documents Department, Louisiana State University, Baton Rouge, LA 70803.

FirstEnergy Nuclear Operating Company, Docket No. 50–440, Perry Nuclear Power Plant, Unit 1, Lake County, Ohio

Date of application for amendment: August 31, 1998.

Brief description of amendment: This amendment revised Technical Specification Surveillance Requirement 3.6.1.3.4 to permit removal of the inclined fuel transfer system primary containment blind flange while primary containment integrity is required.

Date of issuance: February 24, 1999.

Effective date: February 24, 1999.

Amendment No.: 100.

Facility Operating License No. NPF–58: This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: October 21, 1998 (63 FR 56260).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 24, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Perry Public Library, 3753 Main Street, Perry, OH 44081.

FirstEnergy Nuclear Operating Company, Docket No. 50–440 Perry Nuclear Power Plant, Unit 1, Lake County, Ohio

Date of application for amendment: July 13, 1998, and as supplemented by submittal dated November 23, 1998.

Brief description of amendment: This amendment revised Technical Specification 3.4.4,'' Safety/Relief Valves (SRVs),'' by increasing the present plus or minus 1% tolerance on the safety mode lift setpoint for the safety relief valves to plus or minus 3%.

Date of issuance: March 3, 1999.

Effective date: March 3, 1999.

Amendment No.: 101.

Facility Operating License No. NPF–58: This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: August 12, 1998 (63 FR 43214).

The supplemental information contained clarifying information and did not change the initial no significant hazards consideration determination and did not expand the scope of the original application.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 3, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Perry Public Library, 3753 Main Street, Perry, OH 44081.

Illinois Power Company, Docket No. 50–461, Clinton Power Station, Unit 1, DeWitt County, Illinois

Date of application for amendment: October 5, 1998.

Brief description of amendment: The amendment allows deferral of the next scheduled local leak rate test for valve 1MC–042 until the seventh refueling outage.

Date of issuance: March 8, 1999.

Effective date: March 8, 1999, and shall be implemented within 45 days.

Amendment No.: 121.

Facility Operating License No. NPF–62: The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: October 23, 1998 (63 FR 56949).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 8, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: The Vespasian Warner Public Library, 120 West Johnson Street, Clinton, IL 61727.

Northeast Nuclear Energy Company, Docket No. 50–245, Millstone Nuclear Power Station, Unit 1, New London County, Connecticut

Date of application for amendment: December 4, 1998, and January 18 and 19, 1999.

Brief description of amendment: The proposed amendment would modify the staffing and training requirements to allow the use of Certified Fuel Handlers to meet plant staffing requirements.

Date of issuance: March 5, 1999.

Effective date: As of the date of issuance to be implemented within 45 days from the date of issuance.

Amendment No.: 104.

Facility Operating License No. DPR–21: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: December 29, 1998 (63 FR 71657).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 5, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, Connecticut, and the Waterford Library, ATTN: Vince Juliano, 49 Rope Ferry Road, Waterford, Connecticut.

Northeast Nuclear Energy Company, et al., Docket No. 50–336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut

Date of applications for amendment: August 12, 1998, as supplemented by letter dated October 30, 1998; and application dated September 28, 1998, as supplemented by letters dated January 7 and 20, 1999.

Brief description of amendment: The amendment allows implementation of a revised main steamline break analysis and revised control room habitability analyses.

Date of issuance: March 10, 1999.

Effective date: As of the date of issuance to be implemented within 60 days from the date of issuance.

Amendment No.: 228.

Facility Operating License No. DPR–65: Amendment revised the Technical Specifications and authorized changes to the Final Safety Analysis Report.

Date of initial notice in **Federal Register**: October 7, 1998 (63 FR 53951) and December 2, 1998 (63 FR 66597).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 10, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, Connecticut, and the Waterford Library, ATTN: Vince Juliano, 49 Rope Ferry Road, Waterford, Connecticut.

Northeast Nuclear Energy Company, et al., Docket No. 50–336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut

Date of application for amendment: December 10, 1998, as supplemented February 19, 1999.

Brief description of amendment: The amendment allows the licensee to implement changes to the Final Safety Analysis Report (FSAR) regarding a revised method for ensuring boron precipitation can be prevented (post-loss-of-coolant accident).

Date of issuance: March 10, 1999.

Effective date: As of the date of issuance to be implemented within 60 days from the date of issuance.

Amendment No.: 229.

Facility Operating License No. DPR–65: Amendment authorizes changes to the Final Safety Analysis Report.

Date of initial notice in **Federal Register**: January 13, 1999 (64 FR 2249).

The February 19, 1999, supplemental letter provided additional information that did not change the staff's proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 10, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, Connecticut, and the Waterford Library, ATTN: Vince Juliano, 49 Rope Ferry Road, Waterford, Connecticut.

Northeast Nuclear Energy Company, et al., Docket No. 50–423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of application for amendment: June 10, 1998, as supplemented October 30, 1998.

Brief description of amendment: The amendment revises the Millstone Unit 3 licensing basis associated with post-accident mitigation activities, vital area access travel routes, and the associated action completion times. Northeast Nuclear Energy Company determined that the Final Safety Analysis Report (FSAR) description of post-accident vital area routing was out of date

because the radiological control area boundary fence created an access problem on the designated routes to the hydrogen recombiner and fuel building. The revised licensing basis will be incorporated into the FSAR and will revise the routes to accommodate the fence location and allow for the time to unlock gates.

Date of issuance: March 1, 1999.

Effective date: As of the date of issuance to be implemented within 60 days from the date of issuance.

Amendment No.: 166.

Facility Operating License No. NPF–49: Amendment authorized revision to the FSAR.

Date of initial notice in **Federal Register**: July 15, 1998 (63 FR 38202).

The October 30, 1998, letter provided clarifying information that did not change the scope of the June 10, 1998, application, and the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 1, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, Connecticut, and the Waterford Library, ATTN: Vince Juliano, 49 Rope Ferry Road, Waterford, Connecticut.

Northeast Nuclear Energy Company, et al., Docket No. 50–423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of application for amendment: December 4, 1998.

Brief description of amendment: The amendment eliminates the need to cycle the plant and its components through a shutdown-startup cycle by allowing the next snubber surveillance interval to be deferred until the end of refueling outage 6 or September 10, 1999, whichever date is earlier.

Date of issuance: March 3, 1999.

Effective date: As of the date of issuance to be implemented within 30 days from the date of issuance.

Amendment No.: 167.

Facility Operating License No. NPF–49: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: December 30, 1998 (63 FR 71971).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 3, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Learning Resources Center, ThreeRivers Community-Technical College, 574 New London Turnpike, Norwich, Connecticut, and the Waterford Library, ATTN: Vince Juliano, 49 Rope Ferry Road, Waterford, Connecticut.

PP&L, Inc., Docket No. 50–388, Susquehanna Steam Electric Station, Unit 2, Luzerne County, Pennsylvania

Date of application for amendment: August 5, 1998, as supplemented by letter dated November 23, 1998.

Brief description of amendment: This amendment would change the allowable values for both the core spray system and the low-pressure-coolant injection system reactor steam dome pressure-low functions.

Date of issuance: March 4, 1999.

Effective date: As of date of issuance, to be implemented within 30 days.

Amendment No.: 155.

Facility Operating License No. NPF–22: This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: February 1, 1999 (64 FR 4904).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 4, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, PA 18701.

Public Service Electric & Gas Company, Docket No. 50–354, Hope Creek Generating Station, Salem County, New Jersey

Date of application for amendment: August 25, 1998, as supplemented January 27, 1999.

Brief description of amendment: This amendment revised Technical Specification (TS) 2.1.2, ''THERMAL POWER, High Pressure and High Flow,'' and the Bases for TS 2.1, ''Safety Limits.'' These changes were made to implement appropriately conservative Safety Limit Minimum Critical Power Ratio values for the Hope Creek Generating Station Cycle 9 core and fuel designs. An administrative revision has also been made to TS 6.9.1.9 to reflect these changes for Cycle 9.

Date of issuance: March 9, 1999.

Effective date: As of the date of issuance, to be implemented within 60 days after the completion of Cycle 8.

Amendment No.: 117.

Facility Operating License No. NPF–57: This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: September 23, 1998 (63 FR 50938).

The supplemental letter provided clarifying information that did not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 9, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Pennsville Public Library, 190 S. Broadway, Pennsville, NJ 08070.

Public Service Electric & Gas Company, Docket Nos. 50–272 and 50–311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of application for amendments: September 29, 1998.

Brief description of amendments: The amendments revise Technical Specification (TS) 3/4.9.4, ''Refueling Operations—Containment Building Penetrations,'' to allow the use of an equivalent closure device to satisfy the closure requirements of the containment equipment hatch during core alterations or movement of irradiated fuel in containment. The amendment also revises TS 3/4.9.4 to allow the use of an equivalent closure method to satisfy the closure requirements of containment penetrations (in addition to an isolation valve, blind flange or manual valve) during core alterations or movement of irradiated fuel in containment.

Date of issuance: February 26, 1999.

Effective date: Effective as of its date of issuance, to be implemented within 60 days.

Amendment Nos.: 217 and 199.

Facility Operating License Nos. DPR–70 and DPR–75. The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: October 21, 1998 (63 FR 56258).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 26, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Salem Free Public Library, 112 West Broadway, Salem, NJ 08079.

Rochester Gas and Electric Corporation, Docket No. 50–244, R. E. Ginna Nuclear Power Plant, Wayne County, New York

Date of application for amendment: November 24, 1998.

Brief description of amendment: This amendment revises the Ginna Station Improved Technical Specifications

description of the fuel cladding material (TS 4.2.1) and updates the list of references provided in Specification 5.6.5 for the Core Operating Limits Report.

Date of issuance: March 3, 1999.

Effective date: As of date of issuance, to be implemented within 30 days.

Amendment No.: 73.

Facility Operating License No. DPR–18: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: December 30, 1998 (63 FR 71972).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 3, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Rochester Public Library, 115 South Avenue, Rochester, New York 14610.

STP Nuclear Operating Company, Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: July 7, 1998, as supplemented by letters dated October 15 and October 26, 1998, and February 16, 1999. The supplements provided clarifying information and corrected administrative errors within the scope of the amendment request and did not change the initial no significant hazards consideration determination.

Brief description of amendments: The amendments revised the spent fuel pool criticality analysis and rack utilization schemes by allowing credit for spent fuel pool soluble boron.

Date of issuance: March 3, 1999.

Effective date: This license amendment is effective as of its date of issuance and shall be implemented within 90 days of issuance.

Amendment Nos.: Unit 1—Amendment No. 104; Unit 2—Amendment No. 91.

Facility Operating License Nos. NPF–76 and NPF–80: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: August 26, 1998 (63 FR 45530).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 3, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Wharton County Junior College, J. M. Hodges Learning Center, 911 Boling Highway, Wharton, TX 77488.

Tennessee Valley Authority, Docket No. 50–260, Browns Ferry Nuclear Plant, Unit 2, Limestone County, Alabama

Date of application for amendment: September 8, 1998 (TS–354), as supplemented by letter dated February 22, 1999.

Brief description of amendment: Revises the Appendix A Technical Specifications (TS) to include provisions for enabling the Oscillation Power Range Monitor Upscale trip function in the Average Power Range Monitor.

Date of issuance: As of date of issuance to be implemented at the end of the Unit 2 Cycle 10 outage scheduled to begin on April 11, 1999.

Effective date: March 5, 1999.

Amendment No.: 258.

Facility Operating License No. DPR–52: Amendment revises the TS.

Date of initial notice in **Federal Register**: October 7, 1998 (63 FR 53958). The supplemented letter dated February 22, 1999, did not change the original no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 5, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Athens Public Library, South Street, Athens, Alabama 35611.

Virginia Electric and Power Company, et al., Docket Nos. 50–338 and 50–339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of application for amendments: November 10, 1998.

Brief description of amendments: The amendments revise the Technical Specifications Sections 3.4.4 and 3.4.4.a for Unit 1, and 3.4.4 and 3.4.4.a for Unit 2, providing a clarification on the operability requirements for pressurizer heaters and the emergency power source for the pressurizer heaters.

Date of issuance: March 1, 1999.

Effective date: March 1, 1999.

Amendment Nos.: 217 and 198.

Facility Operating License Nos. NPF–4 and NPF–7. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: December 2, 1998 (63 FR 66605).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 1, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: The Alderman Library, Special Collections Department, University of Virginia, Charlottesville, Virginia 22903–2498.

Virginia Electric and Power Company, et al., Docket Nos. 50–338 and 50–339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of application for amendments: October 25, 1995, as supplemented February 5, 1999. The February 5, 1999, supplemental letter contained clarifying information only, and did not change the initial no significant hazards consideration determination or expand the scope of the original **Federal Register** Notice.

Brief description of amendments: The amendments revise the Technical Specifications (TS) Sections 3.4.3.2, 4.4.3.2.1.b, 4.4.3.2.1.c, 4.4.3.2.2, 4.4.9.3.d, 4.4.9.3.e, 3/4.4.2, 3/4.4.3, 3/4.4.4 and 6.8.4.g for Unit 1, and 3.4.3.2, 4.4.3.2.1.c, 4.4.3.2.2, 4.4.9.3.d, 4.4.9.3.e, 3/4.4.2, 3/4.4.3, 3/4.4.4 and 6.8.4.g for Unit 2, providing an allowed outage time of 14 days for the prezzurizer power operated relief valve (PORV) nitrogen accumulators, as well as provide separate action statements for the PORV depending on the reason for the PORV inoperability.

Date of issuance: March 2, 1999.

Effective date: March 2, 1999.

Amendment Nos.: 218 and 199.

Facility Operating License Nos. NPF–4 and NPF–7. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: June 5, 1996 (61 FR 28620).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 2, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: The Alderman Library, Special Collections Department, University of Virginia, Charlottesville, Virginia 22903–2498.

Virginia Electric and Power Company, et al., Docket Nos. 50–280 and 50–281, Surry Power Station, Units 1 and 2, Surry County, Virginia

Date of application for amendments: September 24, 1998.

Brief description of amendments: These amendments revise the Technical Specifications to allow the reactor trip bypass breakers to be tested immediately after being placed in service, but prior to commencing Reactor Protection System testing or maintenance.

Date of issuance: March 12, 1999.

Effective date: March 12, 1999.

Amendment Nos.: 219 and 219.

Facility Operating License Nos. DPR–32 and DPR–37: Amendments change the Technical Specifications.

Date of initial notice in **Federal Register**: February 10, 1999 (64 FR 6715).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 12, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Swem Library, College of William and Mary, Williamsburg, Virginia 23185.

Wisconsin Electric Power Company, Docket Nos. 50–266 and 50–301, Point Beach Nuclear Plant, Units 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of application for amendments: September 28, 1998 (TSCR 208).

Brief description of amendments: These amendments clarify the notation definition of refueling interval ''R'' in TS Table 15.4.1–1 and add a new annual (12-month) interval ''A''.

Date of issuance: March 1, 1999.

Effective date: March 1, 1999, with full implementation within 45 days.

Amendment Nos.: 186 and 191.

Facility Operating License Nos. DPR–24 and DPR–27: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: January 27, 1999 (64 FR 4162).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 1, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: The Lester Public Library, 1001 Adams Street, Two Rivers, Wisconsin 54241.

Wisconsin Electric Power Company, Docket Nos. 50–266 and 50–301, Point Beach Nuclear Plant, Units 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of application for amendments: October 5, 1998 (TSCR 200).

Brief description of amendments: These amendments modify TS Section 15.4.1, ''Operational Safety Review,'' by removing the requirement to check certain environmental monitors on a monthly basis.

Date of issuance: March 2, 1999.

Effective date: March 2, 1999, with full implementation within 45 days.

Amendment Nos.: 187 and 192.

Facility Operating License Nos. DPR–24 and DPR–27: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: January 27, 1999 (64 FR 4163).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 2, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: The Lester Public Library, 1001 Adams Street, Two Rivers, Wisconsin 54241.

Wisconsin Electric Power Company, Docket Nos. 50–266 and 50–301, Point Beach Nuclear Plant, Units 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of application for amendments: October 7, 1998 (TSCR 207).

Brief description of amendments: These amendments incorporate changes to the Technical Specifications to ensure the 4 kV bus undervoltage input to the reactor trip protective function is controlled in accordance with the design and licensing basis for the facility. An additional administrative change removes the footnote related to the definition of Rated Power in TS 15.1.j.

Date of issuance: March 2, 1999.

Effective date: March 2, 1999, with full implementation within 45 days.

Amendment Nos.: 188 and 193.

Facility Operating License Nos. DPR–24 and DPR–27: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: December 30, 1998 (63 FR 71978).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 2, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: The Lester Public Library, 1001 Adams Street, Two Rivers, Wisconsin 54241.

Yankee Atomic Electric Company, Docket No. 50–29, Yankee Nuclear Power Station, Franklin County, Massachusetts

Date of application for amendment: October 15, 1998.

Brief description of amendment: Revises the Possession Only License by changing the submittal interval for the Radioactive Effluent Reports from semiannual to annual.

Date of issuance: March 5, 1999.

Effective date: March 5, 1999.

Amendment No.: 151.

Possession Only License No. DPR–3: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 18, 1998 (63 FR 64128). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated No significant hazards consideration comments received: No.

Local Public Document Room location: Greenfield Community College, 1 College Drive, Greenfield, Massachusetts 01301.

Dated at Rockville, Maryland, this 17th day of March 1999.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–7032 Filed 3–23–99; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (Innovative Medical Services, Common Stock, and Class A Common Stock Purchase Warrants) File No. 1–14468

March 18, 1999.

Innovative Medical Services (''Company'') has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to Section 12(d) of the Securities Exchange Act of 1934 (''Act'') and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified securities (''Securities'') from listing and registration on the Boston Stock Exchange, Inc. (''BSE'' or ''Exchange'').[1]

The reasons cited in the application for withdrawing the Securities from listing and registration include the following:

The Securities of the Company have been listed for trading on the BSE and the Nasdaq SmallCap Market since August 8, 1996, pursuant to a Registration Statement on Form 8–A which became effective on said date.

The Company has complied with the rules of the BSE by filing with the Exchange a certified copy of the preambles and resolution adopted by the Company's Board of Directors authorizing the withdrawal of its Securities from listing on the BSE and by setting forth in detail to the Exchange the reasons for the proposed withdrawal and the facts in support thereof. In making the decision to withdraw its Securities from listing on the BSE, the Company considered the direct and indirect costs of maintaining dual listings of its Securities on the BSE and the Nasdaq SmallCap Market. The

[1] Notice of this application was previously issued by the Commission as Release No. 34–41114 on February 25, 1999. Such notice, however, failed to appear in the **Federal Register**, as required, and so is being reissued.

Company does not believe that due to the duplication of expenses of continued listing on both Exchanges there is any benefit to continued listing on the BSE.

The Exchange has informed the Company that it has no objection to the withdrawal of the Company's Securities from listing on the BSE.

The Company's application relates solely to the withdrawal from listing of the Securities from the BSE and shall have no effect upon the continued listing of the Securities on the Nasdaq SmallCap Market.

Any interested person may, on or before, April 8, 1999, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth street, N.W., Washington, D.C. 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–7156 Filed 3–23–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application to Withdraw From Listing and Registration; (International FiberCom, Inc., Common Stock, No Par Value) File No. 1–13278

March 18, 1999.

International FiberCom, Inc. (''Company'') has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to Section 12(d) of the Securities Exchange Act of 1934 (''Act'') and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security (''Security'') from listing and registration on the Philadelphia Stock Exchange, Inc. (''PHLX'' or ''Exchange'').

The reasons cited in the application for withdrawing the security from listing and registration include the following:

The security has been listed for trading on the Nasdaq National Market as well as the PHLX. The Company has considered the direct and indirect costs and expenses in connection with maintaining the listing of its security on the PHLX. Due to the low level of trading volume in its security on the PHLX, and in light of the recent changes to the Securities Act of 1933, as amended, under the National Securities Markets Improvement Act of 1996, the Company does not see any particular advantage in continuing to list its security on the PHLX. The Company also believes that the trading of its security on multiple exchanges may possibly fragment the market for its security.

The Company has filed with the Exchange a certified copy of the resolutions adopted by the Company's Board of Directors authorizing the withdrawal of its security from listing on the Exchange and has provided to the Exchange detailed reasons for the proposed withdrawal, and the facts in support thereof.

The Exchange has informed the Company that it has no objection to the withdrawal of the Company's security from listing on the PHLX.

The application refers only to the security set forth above and shall have no effect upon the continued listing of such security on the Nasdaq National Market. In addition, by reason of Section 12(g) of the Act and the rules and regulations of the Commission thereunder, the Company shall be obligated to continue to file reports with the Commission under Section 13 of the Act.

Any interested person may, on or before, April 8, 1999, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–7154 Filed 3–23–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

Cosmos Ventures, Inc.; Order of Suspension of Trading

March 22, 1999.

It appears to the Securities and Exchange Commission that there is a lack of current, adequate and accurate information concerning the securities of Cosmos Ventures, Inc., a Nevada shell corporation Questions have been raised about the adequacy and accuracy of publicly disseminated information concerning, among other things, the business prospects of Cosmos Ventures, Inc., including its purported acquisition of all rights to a foreign pulp mill.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above listed company.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the above listed company is suspended for the period from 9:30 a.m. EST, March 22, 1999, through 11:59 p.m. EDT, on April 5, 1999.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–7274 Filed 3–22–99; 12:45 pm]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41180; File No. SR–NASD–98–94]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the National Association of Securities Dealers, Inc. to Amend Adjudication Procedures for Clearly Erroneous Transactions

March 17, 1999.

On December 18, 1998, the National Association of Securities Dealers, Inc., (''NASD'' or ''Association'') through its wholly-owned subsidiary, NASD Regulation, submitted to the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend adjudication procedures for clearly erroneous transactions. The **Federal Register** published the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

proposed rule change for comment on February 3, 1999.[3] The Commission received no comments on the proposal. This order approves the proposal.

Description of the Proposal

NASD Regulation is proposing to amend NASD Rule 11890 (''Rule'') to conform the time frame for requesting a clearly erroneous adjudication for pre-opening transactions to the 30 minute frame that applies trades that occur after 10:00 a.m. The rule permits The Nasdaq Stock Market, Inc. (''Nasdaq'') to review erroneous transactions and declare them void or otherwise modify their terms. In 1998, the Commission approved changes to the rule to make this process more efficient and fair (''Amendments'').[4] NASD Regulation amended the rule to require members to submit erroneous transaction complaints within 30 minutes of the transaction. Prior to the amendments, the rule allowed members to submit these complaints any time during the trading day. The Association hoped the amendments would preclude firms from waiting until the end of the day to submit erroneous transaction complaints after deciding whether the erroneous trade became unprofitable. The amendments also required that firms give the counterparty to the erroneous transaction adequate notice of the error within a short period of time.

Because of the high trading volume, however, the NASD intended to provide additional time to submit adjudication requests for trades occurring during the first half of each trading day. Specifically, the NASD intended that members have until 10:30 a.m. to request an adjudication for trades occurring between the 9:30 a.m. open and 10:00 a.m. The rule, however, currently only applies to trades that occur before 10:00 a.m., and does not mention trades that occur before the 9:30 a.m. opening. Consequently, a literal reading of the rule accords additional time to pre-9:30 a.m. transactions as well as those that occur between 9:30 and 10:00 a.m.

The NASD staff identified this issue when the Commission approved the amendments, but agreed, in consultation with Commission staff, to wait and observe the operation of the amended rule. After administering the amended rule for eight months, the NASD has confirmed its original belief that this additional time is not necessary for pre-opening transactions and is inconsistent with the original intent of the amendments.

In particular, the NASD notes that of the 27 requests for adjudication involving pre-opening trades received since the amendments, more than half were submitted by members within 30 minutes (in several instances within ten minutes) even though some members had as long as 90 minutes to do so. More importantly, members made virtually all of these requests (23 of 27) after the market opened and they had an opportunity to observe the direction of the market. While the NASD still believes that it is appropriate to provide additional time to request an adjudication for erroneous trades that occur following the opening, the NASD believes providing members additional time for pre-opening transactions is inconsistent with the intent of the amendments and allows members to abuse the rule.

Discussion

The Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities association. In particular, the Commission finds that the proposed rule change is consistent with Section 15A(b)(6) of the Act,[5] which requires that an Association's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to protect investors and the public interest.[6] Specifically, the Commission believes the proposed rule change promotes fair and efficient resolution of disputes involving clearly erroneous transactions. The Commission believes that uncorrected erroneous transactions hinder an investor's ability to rely on reported transactions as accurately reflecting the current state of the market. The Commission believes the proposed rule change will lessen the impact of erroneous transactions on the public by allowing Nasdaq to more quickly correct erroneous transactions that have been publicly reported.

Conclusion

It is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[7] that the proposed rule change (SR–NASD–98–94) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–7155 Filed 3–23–99; 8:45 am]

BILLING CODE 8010–01–M

[3] *See* Exchange Act Release No. 40992 (Jan. 28, 1999), 64 FR 5846 (Feb. 5, 1999).

[4] Exchange Act Release No. 39550 (Jan. 14, 1998), 63 FR 4333 (Jan. 28, 1998) (approving SR–NASD–96–51).

[5] 15 U.S.C. 78*o*–3.

[6] In approving this rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78s(b)(2).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41177; File No. SR–NYSE–98–05]

Self-Regulatory Organizations; New York Stock Exchange, Inc.: Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 1 to Proposed Rule Change Relating to the Reimbursement of Member Organizations for Costs Incurred in the Transmission of Proxy and Other Shareholder Communication Material

March 16, 1999.

I. Introduction

On February 6, 1998, the New York Stock Exchange, Inc. (''Exchange'' or ''NYSE'') submitted to the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to extend through June 30, 2001, the effectiveness of the pilot fees (''Pilot Fee Structure'') set forth in Exchange Rule 451, ''Transmission of Proxy Material,'' and Exchange Rule 465, ''Transmission of Interim Reports and Other Material'' (collectively the ''Rules'').[3] The Rules establish guidelines for the reimbursement of expenses by NYSE issuers to NYSE member organizations for the processing and delivery of proxy materials and other issuer communications to security holders whose securities are held in street name.[4] The proposed rule change also

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The ''Pilot Fee Structure'' originally was approved by the Commission on March 14, 1997. *See* Securities Exchange Act Release No. 38406 (Mar. 14, 1997), 62 FR 13922 (Mar. 24, 1997) (''Original Pilot Approval Order''). The Pilot Fee Structure subsequently was extended several times and modified once. *See infra* notes 14 and 15. The Exchange amended its proposed rule change to extend the Pilot Fee Structure through August 31, 1999, rather than June 30, 2001, as originally proposed. *See infra* note 8.

[4] The ownership of shares in street name means that a shareholder, or ''beneficial owner,'' has purchased shares through a broker-dealer or bank, also known as a ''nominee.'' In contrast to direct ownership, where the shares are directly registered

sought to revise the Rules to allow NYSE member firms to reduce mailings to beneficial owners through the ''householding'' of materials, provided that implied consent (*i.e.*, beneficial owner does not object after receiving 60 days written notice of the proposed householding) is obtained from the beneficial owners.[5] This portion of the proposal has been withdrawn by the Exchange.[6]

The proposed rule change was published for comment in the **Federal Register** on March 26, 1998.[7] The Commission received 47 comment letters on the proposal. On March 9, 1999, the Exchange filed with the Commission Amendment No. 1 to the proposed rule change.[8] This order approves, through August 31, 1999, the proposed rule change, as amended, and Amendment No. 1 on an accelerated basis.

II. Background

NYSE member organizations that hold securities for beneficial owners in street name solicit proxies from, and deliver proxy and issuer communication materials to, beneficial owners on behalf of owners of NYSE-listed company shares. For this service, NYSE issuers reimburse NYSE member organizations for reasonable out-of-pocket, clerical, postage, and other expenses incurred in performing such activities. The Rules provide specific fee guidelines for the reimbursement of these expenses.

Over the last thirty years, NYSE member firms increasingly have outsourced their proxy delivery obligations to proxy distribution intermediaries. The primary reason underlying this shift is that member firms believe proxy distribution is not a core broker-dealer business and that capital is better used elsewhere. By the early 1990's, two proxy distribution firms distributed most of the proxies to street name accounts on behalf of NYSE member firms: Automatic Data Processing (''ADP'')[9] and the Independent Election Corporation of America (''IECA''). In February 1992, ADP acquired IECA and became the dominant proxy distribution intermediary. By 1993, ADP reportedly distributed seventy percent of all proxies sent to beneficial owners holding shares in street name. Because three of the four remaining major self-distributing broker-dealers recently contracted with ADP to discharge their proxy delivery and voting obligations,[10] that figure now stands close to one hundred percent.[11]

III. Description of the Proposal

A. The Pilot Fee Structure

On March 14, 1997, the Commission approved an Exchange proposal that significantly revised the reimbursement guidelines set forth in the Rules and established the Pilot Fee Structure.[12] The Pilot Fee Structure was designed to address many of the functional and technological changes that had occurred in the proxy distribution process since the Rules were last revised in 1986. Although the Pilot Fee Structure reduced certain fees, it also raised one fee, and in some instances created new fees. The Pilot Fee Structure initially was set to expire on May 13, 1998.

Under the fee structure in effect prior to March 14, 1997, NYSE member firms were permitted to charge NYSE issuers a basic processing fee of $0.60–$0.70 for each proxy package (*i.e.*, proxy statement, form of proxy, and annual report) delivered to a beneficial owner.[13] The Pilot Fee Structure reduced this fee to $0.55 per proxy package. In the subsequent companion filing to this proposed rule change, the Exchange amended the Pilot Fee Structure to further reduce the basic proxy processing fee to $0.50.[14] The companion filing also extended the effectiveness of the Pilot Fee Structure from May 13, 1998, through July 31, 1998. Three additional Exchange rule filings extended the effectiveness of the Pilot Fee Structure, as amended by the companion filing, to March 15, 1999.[15]

The Pilot Fee Structure also reduced from $0.20 to $0.15 the fee for annual reports that are mailed separately from the proxy materials pursuant to the instruction of the person soliciting proxies. The Pilot Fee Structure likewise reduced from $0.20 to $0.15 the fee for interim reports, annual reports if mailed separately, post meeting reports, or other material. The historic fee structure's $0.60 fee for mailing follow-up proxy materials only to beneficial owners who had not voted was eliminated; however, the fee for mailing follow-up proxy materials to all beneficial owners remained $0.40. The fee for proxy fights (*i.e.*, an opposition proxy statement has been furnished to security holders) was raised under the

in the name of the shareholder, shares held in street name are registered in the name of the nominee, or in the nominee name of a depository such as the Depository Trust Company. Research provided by the Exchange indicates that approximately 70 to 80 percent of all outstanding shares are held in street name and that the shares held in street name are dispersed among approximately 800 nominees.

[5] ''Householding'' is used to eliminate multiple mailings of proxy and other materials to beneficial owners residing at the same address. For example, if a husband and wife living together both separately own shares in the same NYSE issuer, householding could be used to reduce from two to one the number of proxy packages sent to the married couple.

[6] *See infra* note 8.

[7] Securities Exchange Act Release No. 39774 (Mar. 19, 1998), 63 FR 14745 (Mar. 26, 1998).

[8] *See* Letter from James E. Buck, Senior Vice President and Secretary, Exchange, to Sharon Lawson, Senior Special Counsel, Division of Market Regulation, Commission, dated March 8, 1999 (''Amendment No. 1''). Amendment No. 1 to the proposed rule change proposes two revisions: (1) modifying the proposed term of the Pilot Fee Stucture from June 30, 2001, to August 31, 1999; and (2) withdrawing the householding through implied consent provision. Amendment No. 1 also clarifies that the proposed rule change, as revised by Amendment No. 1, proposes to extend through August 31, 1999, the Pilot Fee Structure, as amended by the companion filing (*see infra* note 14 and related text for a description of the companion filing).

[9] The name of the actual business unit that serves as a proxy distribution intermediary is ADP Beneficial Shareowner Communication (''ADP BCS''). ADP BCS is a service line of ADP Investor Communication Services, a division of ADP Financial Information Services, Inc., which in turn is an indirect wholly owned subsidiary of Automatic Data Processing, Inc. For clarity and ease of reference, the acronym ''ADP'' will be used in place of ''ADP BCS.''

[10] As recently as the 1997 proxy season, four major broker-dealers directly distributed proxy materials to their customers holding shares in street name: Merrill Lynch, Paine Webber, Prudential Securities, and the Dean Witter arm of Morgan Stanley Dean Witter. Currently, only Dean Witter directly distributes proxy materials to street name accounts.

[11] For a more detailed description of the background and history of the proxy distribution industry, proxy fees, as well as the events leading to the Exchange's proposal to revise the Rules, *see* Original Pilot Approval Order *supra* note 3.

[12] *See* Original Pilot Approval Order *supra* note 3. Under the Pilot Fee Structure, NYSE member organizations also are entitled to receive reimbursement for: (i) actual postage costs (including return postage at the lowest available rate); (ii) the actual cost of envelopes (provided they are not furnished by the person soliciting proxies); and (iii) any actual communication expenses (excluding overhead) incurred in receiving voting returns either telephonically or electronically. Prior to the Pilot Fee Structure, NYSE member firms were entitled to reimbursement for ''all out-of-pocket expenses, including reasonable clerical expenses, incurred in connection with proxy solicitations pursuant to Rule 451 and in mailing interim reports or other material pursuant to Rule 465.'' *See* Exchange Rule 451, Supplementary Material .90, ''Schedule of Approved Charges by Member Organizations in Connection with Proxy Solicitations'' and Exchange Rule 465, Supplementary Material .20, ''Mailing Charges by Member Organizations.''

[13] The $0.60 fee applied to proxy packages for meetings that did not include a proposal that required beneficial owner instructions; the $0.70 fee applied to proxy packages for meetings that included a proposal that required beneficial owner instructions (*e.g.*, proxy fights).

[14] *See* Securities Exchange Act Release No. 39672 (Feb. 17, 1998), 63 FR 9034 (Feb. 23, 1998).

[15] *See* Securities Exchange Act Release Nos. 40289 (July 31, 1998), 63 FR 42652 (Aug. 10, 1998) (extended the Pilot Fee Structure from July 31, 1998, through October 31, 1998); 40621 (Oct. 30, 1998), 63 FR 60036 (Nov. 6, 1998) (extended the Pilot Fee Structure from October 31, 1998, through February 12, 1999); and 41044 (Feb. 11, 1999), 64 FR 8422 (Feb. 19, 1999) (extended the Pilot Fee Structure from February 12, 1999, through March 15, 1999).

Pilot Fee Structure from $0.70 to $1.00 for each set of proxy materials mailed.

The Pilot Fee Structure implemented two new fees. First, a paper elimination incentive fee of $0.50 was instituted for each proxy package ($0.10 for each interim report) not mailed because of either householding or electronic delivery. The paper elimination fee was intended to serve as an incentive to use technologies, such as electronic mail, to reduce the number of paper mailings sent to beneficial owners. The paper elimination incentive fee could be assessed in addition to the basic processing fee. Second, the Pilot Fee Structure implemented a nominee coordination fee of $20 per nominee (*i.e.*, each NYSE issuer must pay $20 for each nominee holding its shares in street name). The nominee coordination fee was designed to compensate a proxy distribution intermediary for coordinating a series of functions across multiple nominees. The functions included are: consolidation of search responses, delivery of materials to nominees, use of bulk mail, and tabulation and dissemination of preliminary voting information.[16]

Finally, the Pilot Fee Structure permitted the householding of proxy and other materials to beneficial owners provided that actual written consent was obtained from the beneficial owner to whom the materials are not sent.[17] This provision allows member firms to household annual reports, interim reports, proxy statements, and other material.[18]

B. The Proposal and Amendment No. 1

In its original form, the Exchange's proposed rule change sought to extend the effectiveness of the Pilot Fee Structure through June 30, 2001. In Amendment No. 1, the Exchange requested that the Pilot Fee Structure end on August 31, 1999. The original version of the proposal also sought to permit the householding of proxy materials and other issuer communications through implied consent. Specifically, the Exchange had sought to permit householding if a beneficial owner did not object after receiving 60 days written notice of the proposed householding. Amendment No. 1 withdrew the householding through implied consent provision from the Exchange's proposal.

IV. Summary of Comments

The Commission received 47 comment letters regarding the Exchange's proposed rule change.[19] A substantial majority of the commenters, 41 of the 47, supported the proposal. Four commenters did not support the proposal,[20] and one commenter

[16] *See* Original Pilot Approval Order *supra* note 3 for a more detailed discussion of the nominee coordination fee, the coordination services encompassed in that fee, and the supporting rationale provided by the Exchange.

[17] *See* Exchange Rule 451, Supplementary Material .95, ''Householding' of Reports'' and Exchange Rule 465, Supplementary Material .25, ''Householding' of Reports.'' For a description of householding, *see supra* note 5.

[18] *But see* 17 CFR 240.14a–3(e) and 17 CFR 240.14c–7(a).

[19] All of the comment letters are part of File No. SR–NYSE–98–05, which is available for public review and inspection in the Commission's Public Reference Section. The comment letters were submitted by twenty-six issuers, nine broker-dealers, six trade associations, two institutional investors, one bank, one potential proxy service provider, one economic analysis company retained by ADP (Analysis Group/Economics), and the ADP Steering Committee. The comment letters are listed below in the order they were received by the Commission's Office of the Secretary. *See* Letters from: Timothy E. Hall, Corporate Controller, Flexsteel Industries, Inc., dated February 24, 1998 (''Flexsteel Letter''); Judy Foshay, Director, Shareholder Services, Cirrus Logic, dated April 9, 1998 (''Cirrus Letter''); Sari L. Macrie, Vice President, Investor Relations, Ameritech, dated April 8, 1998 (''Ameritech Letter''); Janet M. Turner, Vice President, Investor Relations, PLM International, Inc., dated April 14, 1998 (''PLM Letter''); Sophia G. Vergas, Assistant Secretary, The Liberty Corporation, dated April 14, 1998 (''Liberty Letter''); Anne C. Cumberledge, Manager, Investor Relations, Meridian Industrial Trust, dated April 10, 1998 (''Meridian Letter''); Rhoda Anderson, Director, Corporate Secretary's Department, Lucent Technologies, and Chairperson, ADP Steering Committee (on behalf of: Linda Selbach, Barclays Global Investors; Janice Hester Amey, CALSTRS; Ray DiSanza, Charles Schwab & Co.; Paula Gurley, Colorado Public Employees' Retirement Association; Steven Berk, J.P. Morgan Services; Nancy Obringer, Mellon Bank; Gordon Garney, Mobil Corporation; and Rafael Dieppa, Oppenheimer & Co.), dated April 14, 1998 (''ADP Steering Committee Letter''); Jerome J. Clair, Senior Vice President, Smith Barney Inc., dated April 15, 1998 (''Smith Barney Letter''); Virgil L. Clubbs, Associate Vice President, A.G. Edwards & Sons, Inc., dated April 15, 1998 (''A.G. Edwards Letter''); John E. Nolan, Senior Vice President, Raymond James & Associates, Inc., dated April 15, 1998 (''Raymond James Letter''); Peter Quick, President, Quick & Reilly, dated April 13, 1998 (''Quick & Reilly Letter''); John B. Meagher, Consultant to Corn Products International, Inc., dated April 15, 1998 (''Corn Products Letter''); George Kim Johnson, General Counsel, and Paula A. Gurley, Manager, Shareholder Responsibility Division, Public Employees' Retirement Association of Colorado, dated April 13, 1998 (''PERA Letter''); D. Stuart Bowers, Senior Vice President, Legg Mason Wood Walker, Incorporated, dated April 15, 1998 (''Legg Mason Letter''); Roger P. Smith, Secretary, 3M, dated April 16, 1998 (''3M Letter''); Janice Hester Amey, Corporate Affairs Advisor, State of California State Teachers' Retirement System, dated April 15, 1998 (''CALSTRS Letter''); Andrew D. Hendy, Senior Vice President, General Counsel, and Secretary, Colgate-Palmolive Company, dated April 15, 1998 (''Colgate-Palmolive Letter''); John W. Hetherington, Vice President, Secretary, and Assistant General Counsel, Westvaco, dated April 13, 1998 (''Westvaco Letter''); Robert M. Williams, Assistant Secretary, Carolina Power and Light Company, dated April 15, 1998 (''CP&L Letter''); Gordon G. Garney, Senior Assistant Secretary, Mobil Corporation, dated April 16, 1998 (''Mobil Letter''); Stacy A. Matseas, Manager, Stock Administration, QUALCOMM, Incorporated, dated April 15, 1998 (''QUALCOMM Letter''); Gary Ball, Manager, Investor Relations, Fluke Corporation, dated April 15, 1998 (''Fluke Letter''); Sarah A.B. Teslik, Executive Director, Council of Institutional Investors, dated April 20, 1998, with attached letter to Brian Lane dated February 9, 1998 (''CII Letter''); Glynn E. Williams, Jr., Vice President, Finance, Goodrich Petroleum Corporation, dated April 15, 1998 (''Goodrich Letter''); Walter Flicker, Secretary, ResMed Corp., dated April 16, 1998 (''ResMed Letter''); Mike Tate, Controller, Galileo Technology, dated April 14, 1998 (''Galileo Letter''); David Kerner, Treasurer, Standard Motor Products, Inc., dated April 13, 1998 (''Standard Motor Letter''); Laurin L. Laderoute, Jr., Vice President, Assistant General Counsel, and Secretary, Olsten Corporation, dated April 23, 1998 (''Olsten Letter''); Ron Miele, Vice President, Global Operations, Goldman, Sachs & Co., dated April 20, 1998 (''Goldman Letter''); Brian T. Borders, President, Association of Publicly Traded Companies, dated April 24, 1998 (''APTC Letter''); Robert S. Harkey, Senior Vice President, General Counsel, and Secretary, Delta Air Lines, Inc., dated April 16, 1998 (''Delta Letter''); George M. Holston, Assistant General Manager and Assistant Secretary, Texaco Inc., dated April 14, 1998 (''Texaco Letter''); William A. Bowen, Vice President, Finance, AAON, Inc., dated April 16, 1998 (''AAON Letter''); Jennifer LaGrow, Director, Shareholder Services, The Walt Disney Company, dated April 28, 1998 (''Disney Letter''); Donna Murphy, Investor Relations Coordinator, UniSource Energy Corporation, dated April 16, 1998, (''UniSource Letter''); Joan DiBlasi, President, Corporate Transfer Agents Association, Inc., dated May 7, 1998 (''CTA Letter''); David W. Smith, President, American Society of Corporate Secretaries, dated May 11, 1998 (''ASCS Letter''); Susan E. Shaw, Secretary, The Coca-Cola Company, dated May 1, 1998 (''Coca-Cola Letter''); Thomas L. Montrone, President, The Securities Transfer Association, Inc., dated May 18, 1998 (''STA Letter''); Lindsay Klombies, Reorganization Manager, Norwest Bank, dated May 12, 1998 (''Norwest Letter''); Susan C. Hafleigh, Assistant Treasurer, Oracle Corporation, dated May 14, 1998 (''Oracle Letter''); Anne O. Faulk, received June 15, 1998 (''Faulk Letter''); Robert Kaplan, Senior Vice President, Administrative Group Office, Prudential Securities Incorporated, dated June 22, 1998 (''Prudential Letter''); The Corporate Actions Division, Inc., Securities Industry Association, dated July 7, 1998 (''SIA Letter''); Doug Harris, Incumbent Secretary, and Polk Laffoon, Incoming Secretary, Knight Ridder, dated July 23, 1998 (''Knight Letter''); Stephen P. Norman, Secretary, American Express Company, dated August 31, 1998 (''American Express Letter''); and Robert Comment, Analysis Group/Economics, dated October 27, 1998 (''Analysis Group Letter'').

Commission staff also interviewed representatives from fourteen proxy industry participants. *See.* Memorandums to File No. SR–NYSE–98–05 regarding Commission staff meetings or conversations with: First Chicago Trust Co., dated August 13, 1998; The Depository Trust Company, dated August 11, 1998; Dean Witter Reynolds, Inc., dated August 11, 1998; Georgeson & Company, Inc., dated August 11, 1998; JP Morgan, Inc., dated August 11, 1998; Carl T. Hagberg & Associates, dated August 11, 1998; Salomon Brothers, Inc./Smith Barney, Inc., dated August 11, 1998; Bank of New York, dated August 11, 1998; Prudential Securities, dated August 11, 1998; Merrill Lynch, Pierce, Fenner & Smith, Inc., dated August 11, 1998; CT Corporation System, dated August 13, 1998; Investor Responsibility Research Center, dated August 11, 1998; Corporate Investor Communications, dated August 13, 1998; and Paine Webber, Inc., dated August 11, 1998.

[20] *See* CII Letter, CTA Letter, STA Letter, and Faulk Letter, *supra* note 19. Several of these

specifically objected to the nominee coordination fee.[21] One additional commenter, who was retained by ADP to provide an economic analysis of proxy processing, submitted a comment letter that examined price trends, market share, natural monopoly status, predatory pricing, regulatory best practices, and peak-load pricing.[22]

Thirty-six of the 41 commenters supporting the proposal believed an extension of the Pilot Fee Structure through June 30, 2001, was appropriate,[23] while five of those commenters believed that another review of the Pilot Fee Structure was necessary at the conclusion of the extended pilot period.[24] Several other commenters believed that a shorter pilot period would be more appropriate.[25] The commenter retained by ADP asserted that ''the 'ongoing pilot' approach to regulating fees is an invitation to micro-management, and as such is flatly inconsistent with regulatory best practices.'' [26]

In the published notice of the proposed rule change, the Commission solicited comment on the itemized fees prescribed under the Pilot Fee Structure. In particular, the Commission sought comment on the nominee coordination fee and its impact on issuers, the paper elimination incentive fee, certain fees relating to electronic (*e.g.*, Internet) voting and delivery of proxy materials, as well as the length of the proposed extension.[27]

Most commenters did not discuss the itemized fees that ADP charges issuers for electronic proxy delivery and voting services, although 20 commenters stated that they expect that technological developments in electronic delivery and voting will eventually result in cost savings to issuers and therefore should warrant a reevaluation of the appropriate level of the fees in the future.[28] Several commenters specifically stated that the reimbursement fee assessed in connection with electronic voting was appropriate.[29] In contrast, one commenter believed that the basic proxy processing fee for electronic delivery was not appropriate and stated that, according to ADP, ''votes returned by mail cost companies $0.34 per return while Internet votes cost $0.03 per return,'' thus suggesting that ''proxy materials delivered by Internet should cost intermediaries substantially less than materials delivered by mail.'' [30]

Although the majority of commenters were silent regarding the appropriateness of the paper elimination incentive fee, 14 commenters believed the incentive fee was appropriate.[31] One commenter noted that although it ''seems reasonable to continue some incentive appropriate to encourage ongoing efforts to make the substantial improvements yet possible,'' a reduction in the paper elimination incentive fee should be possible now that ADP is offering a system approach to electronic processing.[32] One commenter believed that the incentive fee was inappropriate and stated that the fee was too high in relation to the basic processing fee and the cost savings realized by issuers that household or electronically distribute proxy materials.[33]

Most commenters did not specifically mention the nominee coordination fee. One commenter, however, complained that although its costs for proxy distribution increased significantly over the previous year (104%) because of the nominee coordination fee, the services provided by the proxy distribution intermediary did not change from the previous year.[34] This commenter concluded that the nominee coordination fee ''appears to be unreasonable.'' Four commenters, none of whom are small issuers, believed that small issuers with a diffuse shareholder base should realize the same benefits from the nominee coordination fee as large issuers whose securities are widely owned but more concentrated in the accounts of nominees.[35] Four other commenters, who considered themselves small issuers, did not specifically address the nominee coordination fee issue but stated that they benefit from the application of

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commenters believed that a lack of competition in the proxy distribution industry has resulted in higher than necessary proxy fees and that the regulatory structure governing the delivery of proxy materials to street name shareholders should be revised to promote more competition.

[21] *See* Flexteel Letter *supra* note 19.

[22] *See* Analysis Group Letter *supra* note 19.

[23] *See* Cirrus Letter, Ameritech Letter, PLM Letter, Liberty Letter, Meridian Letter, ADP Steering Committee Letter, Smith Barney Letter, A.G. Edwards Letter, Raymond James Letter, Quick & Reilly Letter, Corn Products Letter, PERA Letter, Legg Mason Letter, 3M Letter, CALSTRS Letter, Colgate-Palmolive Letter, Westvaco Letter, CP&L Letter, QUALCOMM Letter, Fluke Letter, Goodrich Letter, ResMed Letter, Galileo Letter, Standard Motor Letter, Olsten Letter, Goldman Letter, APTC Letter, Delta Letter, Texaco Letter, AAON Letter, UniSource Letter, ASCS Letter, Norwest Letter, Oracle Letter, SIA Letter, and American Express Letter, *supra* note 19.

[24] *See* Cirrus Letter, PLM Letter, CP&L Letter, Fluke Letter, and Standard Motor Letter, *supra* note 19.

[25] The commenter who did not support extension of the Pilot Fee Structure through June 30, 2001, generally did, however, support extending the pilot for a shorter period of either one or two years. *See* Mobil Letter (one or two years), CII Letter (until July 31, 1999). CTA Letter (no more than two years), *supra* Note 19.

[26] *See* Analysis Group Letter, *supra* note 19.

[27] The Commission sought comment on these questions in connection with its independent determination whether the Pilot Fee Structure: (1) provides for the equitable allocation of reasonable fees among NYSE-listed companies and NYSE member firms; (2) conforms with Sections 6(b)(5) and 6(b)(8) of the Act by not unfairly discriminating among issuers and imposing a burden on competition that is not necessary under the Act; and (3) imposes fees that are ''reasonable'' within the meaning of Rules 14a–13, 14b–1, and 14b–2 under Sections 14(a) and 14(b) of the Act (Rules 14a–13, 14b–1, and 14b–2 Act collectively provide that nominees are entitled to reimbursement for the ''reasonable expenses'' incurred in the delivery of proxy materials to beneficial owners.).

[28] *See* Cirrus Letter, PLM Letter, Liberty Letter, ADP Steering Committee Letter, Corn Products Letter, 3M Letter, CP&L Letter, QUALCOMM Letter, Fluke Letter, Goodrich Letter, ResMed Letter, Galileo Letter, Standard Motor Letter, Olsten Letter, Goldman Letter, Texaco Letter, AAON Letter, Disney Letter, UniSource Letter, ASCS Letter, and Oracle Letter, *supra* note 19. One commenter questioned the need for the nominee coordination fee and the paper elimination incentive fee at a time when technology is increasingly being used by issuers and shareholders. *See* Faulk Letter *supra* note 19.

[29] *See* Ameritech Letter, ADP Steering Committee Letter, Smith Barney Letter (stating that the basic proxy processing fee ''represents the multiple steps required in the preparation of the forthcoming proxy record date, the identification of the clients on record date and the vote tabulation. These processes are required regardless whether the distribution is by mail or the Internet.''), A.G. Edwards Letter, Legg Mason Letter, and SIA Letter, *supra* note 19.

[30] *See* CII letter, *supra* note 19. Separately, several commenters believed that the processing fee relating to the mailing of materials in paper form was appropriate. *See* A.G. Edwards Letter, Raymond James Letter, CP&L Letter, QUALCOMM Letter, ResMed Letter, Goldman Letter, Delta Letter, Texaco Letter, and Oracle Letter, *supra* note 19.

[31] One commenter noted that ''[o]nce an automated system is put in place, it must be maintained, at the same time ADP must continue to operate and maintain its normal mailing/vote recording process and integrate both for the process to work.'' *See* Prudential Letter, *supra* note 19. *See also*, Cirrus Letter, ADP Steering Committee Letter, Smith Barney Letter, A.G. Edwards Letter, Raymond James Letter, 3M Letter, CP&L Letter, QUALCOMM Letter, Galileo Letter, Standard Motor Letter, Oracle Letter, SIA Letter, and American Express Letter, *supra* note 19.

[32] *See* 3M Letter, *supra* note 19.

[33] *See* CII Letter, *supra* note 19.

[34] Flexsteel industries (''Flexsteel''), a small issuer listed on the Nasdaq Stock Market, believed that its 1997 proxy costs greatly increased because of the nominee coordination fee but that the higher fee did not reflect any change in service. Flexsteel noted that it had ''1,920 and 1,646 shareholders of common stock at June 30, 1997 and 1996 respectively.'' Flexsteel's proxy distribution costs, however, ''increased from $2,168.94 in 1996 to $4,433.16 in 1997.'' This difference was primarily attributable to the nominee coordination fee of $2,200 charged to Flexsteel. *See* Flexsteel Letter, *supra* note 19.

[35] One commenter noted that ''[a]s a relatively large issuer,'' it could not ''address this question. However, savings in the initiatives for electronic processing should exist for everyone, the relativity of benefits amongst issuers seeming a secondary matter.'' *See* 3M Letter, *supra* note 19. *See also*, QUALCOMM Letter, Goldman Letter, and Oracle Letter, *supra* note 19.

technology by ADP.[36] Finally, one commenter expressed concern that there was no provision for phasing out the nominee coordination fee once the technology was in place for which it was established.[37]

Without commenting on the impact that the nominee coordination fee has on small issuers, four commenters specifically supported the nominee coordination fee.[38] Two other commenters believed that the nominee coordination fee currently appears reasonable, but that the Commission should monitor the appropriateness of the fee in the future.[39] In addition, three commenters suggested that because fees are ''shared'' between ADP and some broker-dealers, the fees could be reduced.[40] Specifically, one commenter questioned whether revenue sharing or a rebate system creates the need for extra revenue through additional fees, such as the nominee coordination fee. The commenter stated that ''[c]learly[,] if rebates are being given, then there is still room in the system to reduce the fees to issuers. Reasonable expense for reimbursement by issuers should not include money to subsidize any revenue sharing or a rebate system since that only serves to cement the intermediary's relationship with their clients which reduces competition.'' [41]

Finally, several commenters indicated their support for the Exchange's implied consent householding proposal.[42] Three commenters suggested that the regulatory framework currently governing the delivery of proxy materials to beneficial owners should be revised to permit greater competition.[43] In addition, one commenter suggested that the Pilot Fee Structure should be revised to increase the economic rationality of the fee structure and to better reflect marginal costs.[44]

V. Discussion

For the reasons discussed below, the Commission finds that the proposal to extend the effectiveness of the Pilot Fee Structure is consistent with the requirements of the Act and the rules and regulations under the Act applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b).[45] Section 6(b)(4) requires that exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using the facilities of an exchange.[46] Section 6(b)(5) requires, among other things, that the rules of an exchange promote just and equitable principles of trade and that they are not designed to permit unfair discrimination between issuers, brokers, or dealers.[47] Section 6(b)(8) prohibits any exchange rule from imposing any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.[48] For the reasons discussed in more detail below, the Commission believes the proposal to extend the Pilot Fee Structure through August 31, 1999, meets the requirements of the Act.[49]

The Commission, along with the Exchange, has carefully monitored the Pilot Fee Structure since its adoption on March 14, 1997. The Commission's Original Pilot Approval Order specifically stated that the Commission's preliminary determination to approve the Pilot Fee Structure would be reevaluated in light of the results of the pilot period and the Exchange's independent audit report. Following publication of the notice of the Exchange's proposed rule change in March 1998, the Commission conducted a thorough review of the Pilot Fee Structure and its impact on NYSE issuers and member firms. In particular, the Commission staff interviewed numerous proxy industry participants to gather information and views on the current proxy system and the Pilot Fee Structure.[50] These interviews provided the staff with information concerning the mechanics of the proxy distribution business and the role of nominees and proxy distribution intermediaries. Based on this information, the Commission staff also analyzed the economic impact of the Pilot Fee Structure on smaller, non-NYSE issuers—a sample that was outside the scope of the Exchange's audit reports.

In addition, the Commission staff undertook an in-depth review of the 1997 and 1998 Audit Reports that were prepared by an independent accounting firm retained by the Exchange.[51] The Audit Reports examined the proxy distribution process for NYSE issuers and member firms during the 1997 and 1998 proxy seasons. The 1997 Audit Report analyzed the proxy operations of ADP and the four major broker-dealers that distributed proxy materials directly during the 1997 proxy season: Dean Witter, Merrill Lynch, Paine Webber, and Prudential Securities. Because three of these broker-dealers contracted with ADP before the 1998 proxy season. Dean Witter was the sole major broker-dealer during the 1998 proxy season that continued to distribute proxy materials directly.[52]

Finally, ADP provided the Commission with a comprehensive report examining the proxy distribution business and ADP's role as an intermediary. In addition to providing an overview of the proxy distribution business and an evaluation of specific

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[36] *See* PLM Letter, Quick & Reilly Letter, Goodrich Letter, and Galileo Letter, *supra* note 19.

[37] *See* CTA Letter *supra* note 19. In addition, this commenter stated that concrete guidelines need to be developed to justify the continuation of the nominee coordination fee.

[38] *See* A. G. Edwards Letter, Raymond James Letter, ResMed Letter, and Delta Letter, *supra* note 19.

[39] *See* CP&L Letter and Knight Letter, *supra* note 19.

[40] *See* CII Letter, Mobil Letter, and STA Letter, *supra* note 19. The commenter retained by ADP noted, however, that ADP's single billing service, in which ADP bills issuers on a consolidated basis on behalf of all nominees, necessitated an ancillary system of sharing revenue with nominees in order to reimburse them for the in-house costs they still incur after subcontracting to ADP. ''Single billing [, however,] has the unintended consequence of placing squarely on ADP the locus of concern over whether nominees are compensated fairly for their in-house costs.'' *See* Analysis Group Letter, *supra* note 19.

[41] *See* Mobil Letter, *supra* note 19.

[42] *See* Smith Barney Letter, Raymond James Letter, Corn Products Letter, Legg Mason Letter, 3M Letter, Mobil Letter, Olsten Letter, APTC Letter, Texaco Letter, CTA Letter, ASCS Letter, Coca-Cola Letter, and SIA Letter, *supra* note 19.

[43] *See* CTA Letter, STA Letter, and Faulk Letter, *supra* note 19. One of these commenters observed that under the current regulatory framework, ''issuers are precluded from selecting other agents for the distribution of annual meeting materials and tabulation of proxies for NOBOs [non-objecting beneficial owners].'' *See* STA Letter, *Supra* note 19. A potential competitor to ADP believed that competition in the delivery of corporate communication materials to beneficial owners should be encouraged. Specifically, ''ownership data for NOBOs should be made available to any participant in the shareholder distribution business. Additionally, ownership information on OBOs [objecting beneficial owners] should also be available to any entity who can assure the objecting owner of a firewall between it and the corporate issuer.'' *See* Faulk Letter, *supra* note 19.

[44] Specifically, the commenter retained by ADP believed that the current system of uniform pricing ignores the fact that costs are higher due to the seasonality in annual meetings. This commenter believed that a non-uniform, peak-load pricing schedule should be introduced to charge peak users for the full cost of the extra capacity needed to accommodate the peak load. *See* Analysis Group Letter, *supra* note 19.

[45] 15 U.S.C. 78f(b).

[46] 15 U.S.C. 78f(b)(4).

[47] 15 U.S.C. 78f(b)(5).

[48] 15 U.S.C. 78f(b)(8).

[49] In approving this proposed rule change, the Commission has considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[50] *See supra* Note 19 for a listing of the proxy industry participants interviewed by the Commission staff.

[51] *See New York Stock Exchange: Shareholder Communication and Proxy Study*, January 1998 (''1997 Audit Report''), and *New York Exchange: Shareholder Communication and Proxy Study*, December 1998 (''1998 Audit Report''). Copies of both Audit Reports are publicly available for review in File No. SR–NYSE–98–05 at the Commission's Public Reference Section located at the address specified in Item VI of this order.

[52] Dean Witter elected not to participate in the survey underlying the 1998 Audit Report.

aspects of the Pilot Fee Structure, the ADP report made recommendations to improve the current system.

The Commission believes the reimbursement guidelines established under the Pilot Fee Structure should be allowed to continue through August 31, 1999.[53] The Commission notes that the Pilot Fee Structure provides an incentive to reduce paper mailings through householding and electronic delivery. The Commission also recognizes that the nominee coordination fee rewards intermediaries, such as ADP, for the consolidation and simplification of numerous functions. Indeed, in general, NYSE issuers and member firms appear to be satisfied with the quality of service provided by ADP. This was further evidenced by the support expressed in a majority of the comment letters regarding the Exchange's proposal to extend the Pilot Fee Structure through June 30, 2001.

However, based on the facts gathered and reviewed during the past two years, including the 1997 and 1998 Audit Reports and the Commission staff's independent analyses, the Commission believes the Pilot Fee Structure could be further modified in the future to provide for a fairer and more reasonable allocation of fees among NYSE issuers and member firms. The experience with the Pilot Fee Structure during the 1997 and 1998 proxy seasons shows that it would be possible to devise a fee structure that benefits more NYSE issuers and that results in lower fees. The Commission has therefore requested that the Exchange promptly and carefully review the Pilot Fee Structure and make changes where necessary to develop an improved fee structure.[54] The Commission has communicated to the Exchange the Commission's desire to see a new fee structure in place for the year 2000 proxy season. Accordingly, the Exchange has agreed to file with the Commission a new fee structure proposal in May 1999.

For several reasons, the Commission believes it is reasonable to extend the Pilot Fee Structure through August 31, 1999, even though the reimbursement guidelines will be further modified in the near future. First, the 1999 proxy season is already underway. The Commission believes that if Pilot Fee Structure were permitted to lapse in the midst of the current proxy season, the resulting change in fee structure (*i.e.*, reversion to the fee structure in place before March 14, 1997) could be inequitable or confusing to NYSE issuers and member firms.[55] The extension through August 31, 1999, will ensure that one pricing scheme will apply to all proxy distributions made to beneficial owners of shares of NYSE issuers during the 1999 proxy season. Second, the additional five month extension will provide the Exchange and the Commission staff with the time necessary to review the Pilot Fee Structure to determine the most equitable way to modify fees. Finally, members of the public will have the opportunity to comment on any proposed fee changes before they are implemented. This is particularly important given that the Pilot Fee Structure generated a significant number of comment letters from a variety of constituencies interested in, and affected by, the fees.

Although the Commission believes it is currently appropriate for the Exchange to specify rates of reimbursement for NYSE member firms that distribute proxy materials to beneficial owners of NYSE issuers during the 1999 proxy season, it remains concerned that competitive market forces do not determine these rates. In the Original Pilot Approval Order, the Commission encouraged the Exchange, issuers, and broker-dealers to develop an approach that would foster competition in the proxy distribution industry so that market forces would determine ''reasonable expenses'' within the meaning of the proxy and Exchange rules. The Commission is concerned that the current lack of competition in the proxy distribution industry may ultimately result in higher costs for NYSE issuers and their shareholders.

In addition to encouraging market participants to explore ways to increase competition, the Commission also suggested that the Exchange and other self-regulatory organizations (''SROs'') investigate whether reimbursement rates could be set by market forces, and whether market forces would provide a more efficient, competitive, and fair process than SRO standards. Because of further consolidation in the proxy distribution industry (*i.e.*, recent contractual arrangements between ADP and Merrill Lynch, Paine Webber, and Prudential), the Exchange has expressed doubts that ''competition will develop to the extent necessary to relieve the Exchange of its role in establishing reimbursement guidelines.''[56] Although the Exchange indicated support for increased competition, it also concluded that the proxy communication process benefits from the economies of scale and uniformity that is created when most mailings are coordinated through a single entity. Furthermore, while other SROs are considering alternatives, no SRO has yet formally proposed an alternative to the present system.

In general, the Commission believes that free market forces, rather than governmental or quasi-governmental authorities, should determine what fees are reasonable for the services provided, especially during this age of rapid technological developments that facilitate the electronic delivery of proxy materials. The Commission is concerned that there are risks attendant to a single proxy distribution intermediary controlling such a high percentage of shareholder material distribution. Moreover, because of the operation of the Commission's proxy rules, issuers cannot themselves distribute proxy materials to street name shareholders or hire their own agents to do so, but instead must reimburse broker-dealers for the reasonable expenses incurred in distributing shareholder materials. Under these rules and industry practice, issuers have no role in determining whether the broker-dealers outsource their proxy distribution function, and if so, which agents they choose. Thus, issuers are unable to bargain for rates commensurate with their size or shareholder profile. Therefore, the Commission in the future will consider ways to increase competition in this area, including whether it would be appropriate to remove itself and the SROs from the rate-setting process.

The Commission requests comment on ways to encourage competition in the

[53] The Commission notes that its determination applies only to the reimbursement guidelines explicitly set forth in the Pilot Fee Structure. The Commission is not making any findings on any terms or practices that are part of privately negotiated contracts between NYSE member firms and proxy distribution intermediaries such as ADP, including multi-year exclusive-dealing and fee-sharing arrangements.

[54] The Commission staff also continues to gather information regarding the current proxy season. Although the Exchange is not required to prepare an Audit Report for the 1998 proxy season, the Commission nonetheless expects to obtain certain basic information from the Exchange and others regarding the results of the 1999 proxy season.

[55] For example, consider two hypothetical NYSE issuers (A and B) that are identical in all respects, including their shareholder profiles. Issuer A distributed its proxy materials before the March 15, 1999, expiration, while Issuer B will do the same in April 1999. If the Pilot Fee Structure were to lapse, these two issuers would pay different proxy fees despite receiving identical proxy services. In addition, some NYSE issuers may distribute proxy materials both before and after the March 15, 1999, expiration date (*e.g.*, proxy statements mailed March 1, 1999, and remember proxies mailed March 29, 1999). In such a case, the issuers would be billed for services during the same proxy season according to two different fee schedules.

[56] *See* Securities Exchange Act Release No. 39774 (Mar. 19, 1998), 63 FR 14745 (Mar. 26, 1998).

distribution of proxy materials to beneficial owners.[57] For example, the Commission previously requested comment on whether a system for voluntary direct delivery of proxy materials to non-objecting beneficial owners by issuers or their agents is preferable to the existing proxy distribution process by allowing issuers to independently determine whether to rely on in-house operations or to contract with outsiders to distribute their proxy materials to non-objecting beneficial owners.[58] Several transfer agents, proxy solicitors, and others have expressed an interest in competing for this type of business. Also, the Commission may consider whether it is appropriate for a uniform fee schedule to take into account the fact that small, non-NYSE issuers have experienced increases in proxy distribution fees.

In summary, although there are some benefits derived from the existing regulatory scheme, the Commission believes that it may be appropriate to consider changes to the Commission's proxy rules in the near future. While the exact form and scope of any possible rulemaking have not been determined, the primary goal is clear: the Commission seeks to ensure protection of shareholder voting rights by introducing competition in the proxy distribution industry. When market forces operate freely to set competitive and reasonable rate of reimbursement, the Commission will consider whether to discontinue its rate-setting role.

The changes outlined above require a two step process. As previously mentioned, the Commission believes the data on the Pilot Fee Structure, including The Commission staff's own economic analyses, indicates that further revisions to the Exchange's reimbursement guidelines are necessary. The Commission expects the Exchange to propose and implement such changes before the year 2000 proxy season. At the same time, the Commission will consider whether to alter the regulatory structure governing the distribution of proxy materials to beneficial owners to remove barriers to the entry of new competitors in this area.

The Commission finds good cause for approving Amendment No. 1 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof. Amendment No. 1 changes the period of effectiveness for the Pilot Fee Structure from June 30, 2001, to August 31, 1999. As stated above, the Commission has asked the Exchange to undertake a thorough and prompt review of the Pilot Fee Structure. After the Exchange has completed its review, the Commission expects the Exchange to submit a proposed rule change in May 1999, which presents a new fee structure. The Commission believes it is appropriate for the Exchange to prepare for the implementation of a new fee structure by shortening the duration of the Pilot Fee Structure. Accordingly, the extension through August 31, 1999, will allow the Pilot Fee Structure to continue uninterrupted during the 1999 proxy season, while providing the Exchange additional time to consider and propose revisions to the Pilot Fee Structure.

Amendment No. 1 also removes from the proposal the provision permitting householding through implied consent. The Commission notes that the Exchange's implied consent householding proposal differs from the Commission's householding initiative now under consideration as part of Commission rulemaking.[59] The Commission is concerned that if the Exchange's householding proposal was approved by the Commission, NYSE member firms would be permitted to engage in householding practices that might be inconsistent with any rule amendments that the Commission might ultimately adopt. Therefore, the Commission believes it is appropriate for the Exchange to withdraw its implied consent householding proposal and wait for the Commission to complete its independent rulemaking.

Based on the above, the Commission believes good cause exists, consistent with Sections 6(b) and 19(b) of the Act,[60] to accelerate approval of Amendment No. 1 to the Exchange's proposed rule change.

VI. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether Amendment No. 1 to 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. 20549–0609. 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 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 Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–NYSE–98–05 and should be submitted by April 14, 1999.

VII. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Sections 6(b)(4), 6(b)(5), and 6(b)(8),[61] and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[62] that the proposed rule change (SR–NYSE–98–05), as amended, is approved through August 31, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[63]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–7157 Filed 3–23–99; 8:45 am]

BILLING CODE 8010–01–M

[57] *See* Item VI of this approval order for specific instructions regarding the submission of comments on these issues.

[58] *See* Securities Exchange Act Release No. 40633 (Nov. 3, 1998), 63 FR 67331 (Dec. 4, 1998).

[59] *See* Securities Act Release No. 7475; Securities Exchange Act Release No. 39321; and Investment Company Act Release No. 22884 (Nov. 13, 1997), 62 FR 61933 (Nov. 20, 1997).

[60] 15 U.S.C. 78f(b) and 78s(b).

[61] 15 U.S.C. 78f(b)(4), 78f(b)(5), and 78f(b)(8).

[62] 15 U.S.C. 78s(b)(2).

[63] 17 CFR 200.30–39a)(12).

DEPARTMENT OF STATE

[Public Notice 3015]

Bureau of Consular Affairs; Certain Foreign Passports Validity

In accordance with section 212(a)(7)(B) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(7)(B)), a nonimmigrant alien who makes an application for a visa or for admission into the United States is required to possess a passport that: (1) is valid for a minimum of six months beyond the date of the expiration of the initial period of the alien's admission into the United States or contemplated initial period of stay and, (2) authorizes the alien to return to the country from which he or she came, or to proceed to and enter some other country during such period. Because of the foregoing

requirement, certain competent authorities have agreed that their passports will be recognized as valid for the return of the bearer for a period of six months beyond the expiration date specified in the passport, thereby effectively extending the validity period of the foreign passport an additional six months beyond its expiration date, see 22 CFR 41.104(b).

This public notice adds Zimbabwe to the list of competent authorities that have provided the necessary assurances to the Government of the United States. The updated list of competent authorities which have made the necessary assurances is shown below:

Table of Foreign Passports Recognized for Extended Validity

Algeria
Antigua & Barbuda
Argentina
Australia
Austria
Bahamas, The
Bangladesh
Barbados
Belgium
Brazil
Canada
Chile
Colombia
Costa Rica
Cote D'Ivoire
Cuba
Cyprus
Czech Republic
Denmark
Dominica
Dominican Republic
Ecuador
Egypt
El Salvador
Ethiopia
Finland
France
Germany
Greece
Grenada
Guinea
Hong Kong (Certificates of identity & passports)
Hungary
Iceland
India
Ireland
Israel
Italy
Jamaica
Japan
Jordan
Korea
Kuwait
Laos
Lebanon
Liechtenstein
Luxembourg
Madagascar
Malaysia
Malta
Mauritius
Mexico
Monaco
Netherlands
New Zealand
Nicaragua (Diplomatic & official only)
Nigeria
Norway
Oman
Pakistan
Panama
Paraguay
Peru
Philippines
Poland
Portugal
Qatar
Russia
Senegal
Singapore
Slovak Republic
Slovenia
South Africa
Spain
Sri Lanka
St. Kitts & Nevis
St. Lucia
St. Vincent & The Grenadines
Sudan
Suriname
Sweden
Switzerland
Syria
Taiwan
Thailand
Togo
Trinidad & Tobago
Tunisia
Turkey
United Arab Emirates
United Kingdom
Uruguay
Venezuela
Zimbabwe

Public Notice 2920 of October 24, 1998 published at 63 FR 60436 is hereby superseded.

Dated: March 15, 1999.

Mary A. Ryan,

Assistant Secretary for Consular Affairs.

[FR Doc. 99–7208 Filed 3–23–99; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF STATE

Office of the Secretary

[Public Notice 3014]

Designation Under Section 5(d)(2) of the International Anti-Bribery and Fair Competition Act of 1998

Pursuant to section 5(d)(2) of the International Anti-Bribery and Fair Competition Act of 1998, Pub. L. 105–366, and by virtue of the authority vested in the Secretary of State by the Presidential Memorandum for the Secretary of State of November 16, 1998, I hereby designate the following agreements as international agreements for purposes of section 5 of the International Anti-Bribery and Fair Competition Act of 1998:

(i) Agreement Relating to the International Telecommunications Satellite Organization (INTELSAT), with annexes. Done at Washington August 20, 1971; entered into force February 12, 1973 (23 UST 3813; TIAS 7532);

(ii) Headquarters Agreement Between the Government of the United States of America and the International Telecommunications Satellite Organization. Signed at Washington November 22 and 24, 1976; entered into force November 24, 1976 (28 UST 2248; TIAS 8542); and

(iii) Convention on the International Mobile Satellite Organization (Inmarsat), with annex. Done at London September 3, 1976; entered into force July 16, 1979 (31 UST 135; TIAS 9605).

This designation is not intended to abridge in any respect privileges, exemptions or immunities that the International Satellite Telecommunications Organization (INTELSAT) or the International Mobile Satellite Organization (Inmarsat) may have acquired by virtue of any other international agreement to which the United States is a party. Any such agreements may be designated as international agreements for purposes of section 5 of the Act by further designation under section 5(d)(2).

Dated: January 27, 1999.

Strobe Talbott,

Acting Secretary of State.

[FR Doc. 99–7207 Filed 3–23–99; 8:45 am]

BILLING CODE 4710–10–P

DEPARTMENT OF STATE

Office of the Secretary

[Public Notice—3004]

Extension of the Restriction on the Use of United States Passports for Travel To, In or Through Iraq

On February 1, 1991, pursuant to the authority of 22 U.S.C. 211a and Executive Order 11295 (31 FR 10603), and in accordance with 22 CFR 51.73 (a)(2) and (a)(3), all United States passports, with certain exceptions, were declared invalid for travel to, in, or

through Iraq unless specifically validated for such travel. The restriction was originally imposed because armed hostilities then were taking place in Iraq and Kuwait, and because there was an imminent danger to the safety of United States travelers to Iraq. American citizens then residing in Iraq and American professional reporters and journalists on assignment there were exempted from the restriction on the ground that such exemptions were in the national interest. The restriction has been extended for additional one-year periods since then, and was last extended on March 20, 1998.

Conditions in Iraq remain unsettled and hazardous, and tensions remain high. Iraq continues to refuse to comply with UN Security Council resolutions to fully declare and destroy its weapons of mass destruction and missiles while mounting a virulent public campaign in which the United States is blamed for maintenance of U.N. sanctions. Between December 14–18, 1998, this refusal resulted in extensive coalition air strikes against Iraqi military targets. Since December 1998, the Iraqi Airforce has violated the northern and southern no-fly zones on more than 100 occasions, and coalition aircraft have been fired upon in more than 60 incidents.

Local conflicts within Iraq also pose hazards to travellers. Military repression of Shia communities continues in southern Iraq with reports that hundreds of persons were summarily killed in security sweeps during 1998. In the north, tens of thousands of Iraqi soldiers remain poised for possible military operations against Kurd, Turkomen, and Assyria Iraqis.

Iraq's economy was severely damaged during the Gulf War and continues to be affected by the government of Iraq's refusal to implement fully the UN's Oil for Food program. Basic modern medical care and medicines may not be available to our citizens in case of emergency.

U.S. citizens and other foreigners working inside Kuwait near the Iraqi borders have been detained by Iraqi authorities in the past and sentenced to lengthy jail terms for alleged illegal entry into the country. Although our interests are represented by the Embassy of Poland in Baghdad, its ability to obtain consular access to detained U.S. citizens and to perform emergency services is constrained by Iraqi unwillingness to cooperate. In light of these circumstances, I have determined that Iraq continues to be a country ''where there is imminent danger to the public health or physical safety of United States travellers''.

Accordingly, United States passports shall continue to be invalid for use in travel to, in, or through Iraq unless specifically validated for such travel under the authority of the Secretary of State. The restriction shall not apply to American citizens residing in Iraq on February 1, 1991, who continue to reside there, or to American professional reporters or journalists on assignment there.

The Public Notice shall be effective upon publication in the **Federal Register** and shall expire March 20, 2000, unless sooner extended or revoked by Public Notice.

Dated: March 18, 1999.

Madeleine K. Albright,

Secretary of State.

[FR Doc. 99–7324 Filed 3–22–99; 2:36 pm]

BILLING CODE 4710–06–U

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Application of Wrangell Mountain Air, Inc.; For Certificate Authority

AGENCY: Department of Transportation.

ACTION: Notice of Order to Show Cause (Order 99–3–13); Docket OST–1999–5010.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order finding Wrangell Mountain Air, Inc., fit, willing, and able, and awarding it a certificate of public convenience and necessity to engage in interstate scheduled air transportation of persons, property, and mail.

DATES: Persons wishing to file objections should do so no later than April 2, 1999.

ADDRESSES: Objections and answers to objections should be filed in Docket OST–1999–5010 and addressed to Department of Transportation Dockets, U.S. Department of Transportation, 400 Seventh Street, SW, Rm. PL–401, Washington, DC 20590, and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Ms. Carol Woods, Air Carrier Fitness Division (X–56, Room 6401), U.S. Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590, (202) 366–2340.

Dated: March 18, 1999.

Charles A. Hunnicutt,

Assistant Secretary for Aviation and International Affairs.

[FR Doc. 99–7173 Filed 3–23–99; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Major Investment Study and Environmental Impact Statement: Stark, Columbiana, and Carroll Counties, Ohio

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that a major investment study and environmental impact statement will be prepared concurrently for transportation improvements proposed in Stark, Columbiana, and Carroll Counties, Ohio.

FOR FURTHER INFORMATION CONTACT: Michael B. Armstrong, Field Operations Engineer, Federal Highway Administration, 200 N. High Street, Room 328, Columbus, Ohio 43215, Telephone: (614) 280–6855.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Ohio Department of Transportation (ODOT), will concurrently prepare a major investment study (MIS) and an environmental impact statement (EIS) on a proposal that will consider transportation improvements to the U.S. 30 corridor from Trump Road in Stark County to State Route 11 in Columbiana County, Ohio.

A transportation investment is considered necessary to improve the regional transportation network by providing an improved east-west travel corridor; to reduce anticipated congestion on existing U.S. Route 30 from projected traffic volumes; to improve safety on the existing highway system by removing trips from the network; and to support existing industry and future development through improved access to the region.

Actions under consideration include: (1) Taking no action; (2) upgrading and/or enhancing elements of the existing U.S. Route 30 transportation network; (3) constructing a roadway on new alignment in the U.S. Route 30 corridor.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in this proposal. A series of public meetings will be held in the project area. On April 14, 1999, the Draft MIS will be presented to the public and, in early 2000, the preliminary draft EIS will be presented. In addition, a public hearing will be held in conjunction with

the draft EIS later in 2000. Public notice will be given of the exact time and place of the meetings and hearing to be held for the MIS and EIS elements of the project. The Draft EIS will be available for public and agency review and comment prior to the public hearing. A scoping meeting for the MIS was held in June 10, 1998. No formal scoping meeting is planned at this time for the EIS.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action, the MIS, or the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: March 18, 1999.

Mr. Michael B. Armstrong,

Field Operations Engineer, Federal Highway Administration, Columbus, Ohio.

[FR Doc. 99–7152 Filed 3–23–99; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[U.S. DOT Docket No. NHTSA–99–5199]

Reports, Forms, and Record Keeping Requirements

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Request for public comment on proposed collection of information.

SUMMARY: Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). Under new procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatements of previously approved collections.

This document describes one collection of information for which NHTSA intends to seek OMB approval.

DATES: Comments must be received on or before May 24, 1999.

ADDRESSES: Direct all written comments to U.S. Department of Transportation Dockets, 400 Seventh Street, SW, Plaza 401, Washington, DC 20590. Docket No. NHTSA–99–5199.

FOR FURTHER INFORMATION CONTACT: Mr. Alan Block, Contracting Officer's Technical Representative, Office of Research and Traffic Records (NTS–31), National Highway Traffic Safety Administration, 400 Seventh Street, SW, Room 6240, Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Under the Paperwork Reduction Act of 1995, before an agency submits a proposed collection of information to OMB for approval, it must publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulations (at 5 CFR 1320.8(d)), an agency must ask for public comment on the following:

(i) 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;

(ii) 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;

(iii) How to enhance the quality, utility, and clarity of the information to be collected; and

(iv) How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

In compliance with these requirements, NHTSA asks public comment on the following proposed collection of information:

National Survey of Pedestrian and Bicyclist Attitudes, Knowledge, and Behavior

Type of Request—New information collection requirement.

OMB Clearance Number—None.

Form Number—This collection of information uses no standard forms.

Requested Expiration Date of Approval—December 31, 2001.

Summary of the Collection of Information—NHTSA proposes to conduct a National Survey of Pedestrian and Bicyclist Attitudes, Knowledge, and Behavior by telephone among a national probability sample of 4,200 adults (age 16 and older). Participation by respondents would be voluntary. The proposed survey would collect information on pedestrian and bicycling behavior, obstacles to walking and bicycling, use of bicycle helmets, training in bicycling safety, pedestrian and bicyclist safety education for children, knowledge of safety issues and rules of the road, assessment of existing community facilities for walking and bicycling, and other related issues.

In conducting the proposed survey, the interviewers would use computer-assisted telephone interviewing to reduce interview length and minimize recording errors. A Spanish-language translation and bilingual interviewers would be used to minimize language barriers to participation. The proposed survey would be anonymous and confidential.

Description of the Need for the Information and Proposed Use of the Information—The National Highway Traffic Safety Administration (NHTSA) was established to reduce the mounting number of deaths, injuries and economic losses resulting from motor vehicle-related crashes on the Nation's highways. As part of this statutory mandate, NHTSA is authorized to conduct research as a foundation for the development of motor vehicle safety standards and traffic safety programs.

While not as much in the public eye as other traffic safety problems, motor vehicle crashes involving pedestrians and bicyclists exact a heavy toll. Pedestrians and bicyclists account for 15 percent of all traffic fatalities, and more than 130,000 injuries each year. Yet there are simple things that people can do to reduce these risks, provided that they are sufficiently aware and willing to take the appropriate steps. For example, a study published in the Journal of the American Medical Association found that the universal use of helmets by all bicyclists could have prevented as many as 2,500 deaths and 757,000 head injuries between 1984 and 1988.

There is a lack of data concerning the public's exposure to risk as pedestrians and bicyclists, their awareness of correct pedestrian and bicyclist safety practices, their perceptions of the responsibilities of other roadway users, and their perceptions of risks. Without this information, safety professionals are left with inadequate tools for determining if there are critical deficits in education or training that should be addressed, or whether interventions are efficiently targeted to where they are most needed. This in turn would pose severe constraints on the ability to meet the U.S. Secretary of Transportation's goal of reducing by 10 percent the number of

injuries and fatalities occurring to bicyclists and pedestrians.

Besides reducing pedestrian/bicyclist injuries and fatalities, the U.S. Secretary of Transportation has called for a doubling in the national percentage of transportation trips made by bicycling and walking. Both goals are part of the DOT Secretarial Initiative for Pedestrian and Bicycle Safety. This is a national effort to promote walking and bicycling as safe, efficient, and healthy ways to travel. It involves partnering with numerous groups to foster the development of a more balanced transportation system. Yet while the Initiative calls for an increase in pedestrian and bicyclist activities, there are no exposure data to measure its progress. Moreover, there is a lack of information on the obstacles to walking and bicycling that would have to be addressed to meet the Secretarial goal; as well as information on how persons decide whether or not to walk, or to bike.

The proposed survey would collect data to meet the informational needs described above. The survey instrument would include items to measure exposure, knowledge, risk perception, community characteristics, and decision factors. The survey data would be used to assess the adequacy of present strategies to increase pedestrian and bicyclist safety, and to help guide policies aimed at encouraging these modes of transportation.

Description of the Likely Respondents (Including Estimated Number, and Proposed Frequency of Response to the Collection of Information)—Under this proposed effort, a telephone interview averaging approximately 23.5 minutes in length would be administered to each of 4,200 randomly selected members of the general public age 16 and older in telephone households. The respondent sample would be selected from all 50 states plus the District of Columbia. Interviews would be conducted with persons at residential phone numbers selected through random digit dialing. Businesses are ineligible for the sample and would not be interviewed. No more than one respondent would be selected per household. Each member of the sample would complete one interview.

Estimate of the Total Annual Reporting and Record Keeping Burden Resulting from the Collection of Information—NHTSA estimates that each respondent in the sample would require an average of 23.5 minutes to complete the telephone interview. Thus, the number of estimated reporting burden hours a year on the general public (4,200 respondents multiplied by 1 interview multiplied by 23.5 minutes) would be 1645 for the proposed survey. The respondents would not incur any reporting cost from the information collection. The respondents also would not incur any record keeping burden or record keeping cost from the information collection.

Rose A. McMurray,

Associate Administrator for Traffic Safety Programs.

[FR Doc. 99–7074 Filed 3–23–99; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Ex Parte No. 290 (Sub No. 5) (99–2)]

Quarterly Rail Cost Adjustment Factor

AGENCY: Surface Transportation Board, DOT.

ACTION: Approval of rail cost adjustment factor.

SUMMARY: The Board has approved the second quarter 1999 rail cost adjustment factor (RCAF) and cost index filed by the Association of American Railroads. The second quarter 1999 RCAF (Unadjusted) is 0.993. The second quarter 1999 RCAF (Adjusted) is 0.589. The second quarter 1999 RCAF–5 is 0.587.

EFFECTIVE DATE: April 1, 1999.

FOR FURTHER INFORMATION CONTACT: H. Jeff Warren, (202) 565–1533. TDD for the hearing impaired: (202) 565–1695.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: DC NEWS & DATA, INC., Suite 210, 1925 K Street, NW, Washington, DC 20423–0001, telephone (202) 289–4357. [Assistance for the hearing impaired is available through TDD services (202) 565–1695.]

This action will not significantly affect either the quality of the human environment or energy conservation.

Pursuant to 5 U.S.C. 605(b), we conclude that our action will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

Decided: March 18, 1999.

By the Board, Chairman Morgan, Vice Chairman Clyburn, and Commissioner Burkes.

Vernon A. Williams,

Secretary.

[FR Doc. 99–7206 Filed 3–23–99; 8:45 am]

BILLING CODE 4915–00–U

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Former Prisoners of War, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 that a meeting of the Advisory Committee on Former Prisoners of War will be held on April 12th through 14th, 1999, at the Department of Veterans Affairs, VA Central Office, 810 Vermont Avenue, NW., Washington, DC 20420. The meeting will be held in Room 230. Each day the meeting will convene at 9 a.m. and end at 4:30 p.m. The meeting is open to the public.

The purpose of the committee is to advise the Secretary of Veterans Affairs on the administration of benefits under Title 38, United States Code, for veterans who are former prisoners of war, and to make recommendations on the need of such veterans for compensation, health care and rehabilitation.

The agenda for April 12 will begin with an introduction of committee members and dignitaries, a review of Committee reports, an update of activities since the last meeting, and also a period for POW veterans and/or the public to address the committee. Additionally, the Committee will receive presentations on the Veterans Benefits Administration and Veterans Health Administration activities. The agenda on April 13 will include updates on the Center for POW Studies, continuing learning education seminars and the Mortality/Morbidity Study. On April 14, the Committee's Medical and Administrative subcommittees will break out to discuss their activities and report back to the Committee. Additionally, the committee will review and analyze the comments that had been discussed throughout the meeting for the purpose of assisting and compiling a final report to be sent to the Secretary.

Members of the public may direct questions or submit prepared statements for review by the Committee in advance of the meeting, in writing only, to Mr. Robert J. Epley, Director, Compensation and Pension Service (21), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. Submitted materials must be received by April 2, 1999. A report of the meeting and roster of Committee members may be obtained from Mr. Epley.

Dated: March 15, 1999.

By Direction of the Secretary.

Heyward Bannister,

Committee Management Officer.

[FR Doc. 99–7147 Filed 3–23–99; 8:45 am]

BILLING CODE 8320–01–M

Corrections

Federal Register
Vol. 64, No. 56
Wednesday, March 24, 1999

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

Correction

In notice document 99–6570 beginning on page 13413 in the issue of Thursday, March 18, 1999, make the following correction(s):

On page 13414, in the first column, in **DATES:** section, in the last line from the bottom, ''[insert the 60th day after publication of this notice]'' should read ''May 17, 1999''.

[FR Doc. C9–6570 Filed 3–23–99; 8:45 am]

BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-41044; File No. SR-NYSE-99-6]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc., Extending the Pilot Rules Governing the Reimbursement of Member Organizations for Costs Incurred in the Transmission of Proxy and Other Shareholder Communication Material

February 11, 1999

Correction

In notice document 99–4116, beginning on page 8422, in the issue of Friday, February 19, 1999, the date line is added as set forth above.

[FR Doc. C9–4116 Filed 3–23–99; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD1-99-015]

RIN 2115-AA97

Safety Zone: Storrow Drive Connector Bridge (Central Artery Tunnel Project), Charles River, Boston MA

Correction

In rule document 99–5921, beginning on page 11771, in the issue of Wednesday, March 10, 1999, make the following correction:

On page 11772, in the third column, the section number, ''§ 165.601-015''should read ''§ 165.T01-015''.

[FR Doc. C9–5921 Filed 3-23-99; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98-AGL-64]

Modification of Class D Airspace and Class E Airspace and Establishment of Class E Airspace; Rapid City, SD

Correction

In rule document 99–6139 beginning on page 12254, in the issue of Friday, March 12, 1999, make the following corrections:

§ 71.1 [Corrected]

1. On page 12255, in the first column, under the heading **AGL SD E4 Rapid City, SD [Revised]**, in the fifth line from the bottom, ''Radid'' should read ''Rapid''.

2. On page 12255, in the second column, under the heading **AGL SD E2 Rapid City, SD [New]**, in the ninth line, ''city'' should read ''City''.

[FR Doc. C9–6139 Filed 3–23–99; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–114664–97]

RIN 1545–AV44

Compliance Monitoring and Miscellaneous Issues Relating to the Low-Income Housing Credit

Correction

In proposed rule document 99–174, beginning on page 1143, in the issue of Friday, January 8, 1999, make the following correction:

On page 1144, in the first column, in the eighth full paragraph, in the third line, after ''information'' add ''unless it displays''.

[FR Doc. C9–174 Filed 3–23–99; 8:45 am]

BILLING CODE 1505–01–D

federal register

Wednesday
March 24, 1999

Part II

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Parts 223 and 224

Endangered and Threatened Species: Threatened Status for Three Chinook Salmon Evolutionarily Significant Units in Washington and Oregon, and Endangered Status for One Chinook Salmon ESU in Washington; Final Rule

Partial 6-Month Extension on Final Listing Determinations for Four Evolutionarily Significant Units of West Coast Chinook Salmon; Proposed Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 223 and 224

[Docket No. 990303060–9071–02; I.D. 022398C]

RIN 0648–AM54

Endangered and Threatened Species; Threatened Status for Three Chinook Salmon Evolutionarily Significant Units (ESUs) in Washington and Oregon, and Endangered Status for One Chinook Salmon ESU in Washington

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

ACTION: Final rule.

SUMMARY: NMFS is issuing final determinations to list four ESUs of west coast chinook salmon as threatened or endangered species under the Endangered Species Act (ESA) of 1973, as amended. Previously, NMFS completed a comprehensive status review of west coast chinook salmon (*Oncorhynchus tshawytscha*) which resulted in proposed listings for eight ESUs. After reviewing additional information, including biological data on the species' status and an assessment of protective efforts, NMFS now concludes that four chinook salmon ESUs warrant protection under the ESA. NMFS has determined that Puget Sound chinook salmon in Washington, Lower Columbia River chinook salmon in Washington and Oregon, and Upper Willamette spring-run chinook salmon in Oregon are at risk of becoming endangered in the foreseeable future and will be listed as threatened species under the ESA. NMFS also has determined that Upper Columbia River spring-run chinook salmon in Washington are in danger of extinction throughout all or a significant portion of their range and will be listed as an endangered species.

With respect to the Central Valley spring-run, Central Valley fall/late fall-run, and Southern Oregon and California Coastal chinook salmon ESUs proposed for listing, NMFS has found that substantial scientific disagreement precludes making final determinations and has extended the deadline for an additional 6 months to resolve these disagreements. Similarly, the proposed revision of the currently listed Snake River fall-run chinook salmon ESU to include fall-run chinook salmon in the Deschutes River, Oregon, is still under review in order to resolve substantial scientific disagreements about the information relevant to that determination. The findings regarding substantial scientific disagreement and extension of final determination for the 4 chinook salmon ESUs published in the Proposed Rules section in this **Federal Register** issue.

DATES: Effective May 24, 1999.

ADDRESSES: Branch Chief, NMFS, Northwest Region, Protected Resources Division, 525 N.E. Oregon St., Suite 500, Portland, OR 97232–2737; Salmon Coordinator, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Garth Griffin at (503) 231–2005, or Chris Mobley at (301) 713–1401.

SUPPLEMENTARY INFORMATION:

Previous Federal Actions

West coast chinook salmon have been the subject of many Federal ESA actions, which are summarized in the proposed rule (63 FR 11482, March 9, 1998). NMFS initially announced its intention to conduct a coastwide review of chinook salmon status in response to a petition to list several Puget Sound chinook salmon stocks on September 12, 1994 (59 FR 46808). After receiving a more comprehensive petition from the Oregon Natural Resources Council and Dr. Richard Nawa on February 1, 1995, NMFS reconfirmed its intention to conduct a coastwide review (60 FR 30263, June 8, 1995). During that review, NMFS requested public comment and assessed the best available scientific and commercial data, including technical information from Pacific Salmon Biological Technical Committees (PSBTCs) and other interested parties. The PSBTCs consisted primarily of scientists (from Federal, state, and local resource agencies, Indian tribes, industries, universities, professional societies, and public interest groups) possessing technical expertise relevant to chinook salmon and their habitats. The NMFS Biological Review Team (BRT), composed of staff from NMFS' Northwest, Southwest, and Auke Bay Fisheries Science Centers, as well as from the National Biological Survey, reviewed and evaluated scientific information provided by the PSBTCs and other sources. Early drafts of the BRT review were distributed to state and tribal fisheries managers and peer reviewers who are experts in the field to ensure that NMFS' evaluation was accurate and complete. The BRT then incorporated tribal and state co-manager comments into the coastwide chinook salmon status review.

Based on the results of the completed status report on west coast chinook salmon (Myers *et al.*, 1998), NMFS has identified fifteen ESUs of chinook salmon from Washington, Oregon, Idaho, and California, including 11 new ESUs, and one redefined ESU (63 FR 11482, March 9, 1998). After assessing information concerning chinook salmon abundance, distribution, population trends, and risks, and after considering efforts being made to protect chinook salmon, NMFS determined that several chinook salmon ESUs did not warrant listing under the ESA. The chinook salmon ESUs not requiring ESA protection included the Upper Klamath and Trinity River ESU, Oregon Coast ESU, Washington Coast ESU, Middle Columbia River spring-run ESU, and Upper Columbia River summer/fall-run ESU.

Also based on this evaluation, and after considering efforts being made to protect chinook salmon, NMFS proposed that seven chinook salmon ESUs warranted listing as either endangered or threatened species under the ESA. The chinook salmon ESUs proposed as endangered species included California Central Valley spring-run and Washington's Upper Columbia River spring-run chinook salmon. The chinook salmon ESUs proposed as threatened species included California Central Valley fall/late fall-run, Southern Oregon and California Coastal, Puget Sound, Lower Columbia River, and Upper Willamette River spring-run chinook salmon. Additionally, NMFS found that fall-run chinook salmon from the Deschutes River in Oregon shared a strong genetic and life history affinity to currently listed Snake River fall-run chinook. Based on this affinity, NMFS proposed to revise the existing listed Snake River fall-run ESU to include fall-run chinook salmon in the Deschutes River. The resulting revised ESU would be listed as threatened.

During the year between the proposed rule and this final determination, NMFS conducted 21 public hearings within the range of the proposed chinook salmon ESUs in California, Oregon, Washington and Idaho. NMFS accepted and reviewed public comments solicited during a 112-day public comment period. Based on these public hearings, comments, and additional technical meetings with Indian tribes and the states, NMFS has found that substantial scientific disagreements exist concerning the information relevant to making final determinations for California's Central Valley spring-run and Central Valley fall/late fall-run, Southern Oregon and California Coastal,

and Snake River fall-run ESUs. As a result, NMFS has extended the period for making final determinations for these ESUs by not more than 6 additional months. The findings regarding substantial scientific disagreement and extension of final determination for the 4 chinook salmon ESUs published in the Proposed Rules section in this **Federal Register** issue.

Also during the comment period, NMFS solicited peer and co-manager review of NMFS' proposal and received comments and new scientific information concerning the status of the chinook salmon ESUs proposed for listing. NMFS also received information regarding the relationship of existing hatchery stocks to native populations in each ESU. This new information was evaluated by NMFS' BRT and published in an updated status review for these chinook salmon entitled ''Status Review Update for West Coast Chinook Salmon (*Oncorhynchus tshawytscha*) from Puget Sound, Lower Columbia River, Upper Willamette River, and Upper Columbia River Spring-run ESUs.'' (NMFS, 1998a). This updated status review report draws conclusions about those specific ESU delineations and risk assessments. Based on the updated NMFS status review and other information, NMFS now issues its final listing determinations for those four proposed ESUs. Copies of NMFS' updated status review report and related documents are available upon request (see **ADDRESSES**).

Species Life History and Status

Biological information for west coast chinook salmon can be found in species' status assessments by NMFS (Matthews and Waples, 1991; Waples *et al.*, 1991; NMFS, 1995; Waknitz *et al.*, 1995; Myers *et al.*, 1998; NMFS, 1998a), Oregon Department of Fish and Wildlife (ODFW, 1991; Nickelson *et al.*, 1992; Kostow *et al.*, 1995), species life history summaries (Miller and Brannon, 1982; Healey, 1991), and in previous **Federal Register** documents (56 FR 29542, June 27, 1991; 63 FR 11482, March 9, 1998).

Summary of Comments and Information Received in Response to the Proposed Rule

NMFS held 21 public hearings in California, Oregon, Idaho, and Washington to solicit comments on this and other salmonid listing proposals (63 FR 16955, April 7, 1998; 63 FR 30455, June 4, 1998). During the 112-day public comment period, NMFS received nearly 300 written comments regarding the west coast chinook salmon proposed rule. A number of comments addressed issues pertaining to the proposed critical habitat designation for west coast chinook salmon. NMFS will address these comments in a forthcoming **Federal Register** document announcing the agency's conclusions about critical habitat for the listed ESUs.

NMFS also sought new data and analyses from tribal, state, and Federal co-managers and met with them to formally discuss technical issues associated with the chinook salmon status review. This new information and analysis was considered by NMFS' BRT in its re-evaluation of ESU boundaries and species' status; this information is discussed in an updated status review report for these chinook salmon, and a summary follows.

In addition to soliciting and reviewing public comments, NMFS must seek peer review of its listing proposals. On July 1, 1994, NMFS, jointly with the U.S. Fish and Wildlife Service (FWS), published a series of policies regarding listings under the ESA, including a policy for peer review of scientific data (59 FR 34270). In accordance with this policy, NMFS solicited 13 individuals to take part in a peer review of its west coast chinook salmon proposed rule. All individuals solicited are recognized experts in the field of chinook salmon biology, and represent a broad range of interests, including Federal, state, and tribal resource managers, and academia. Four individuals took part in the peer review of this action; new information and comments provided by the public and comments from peer reviewers were considered by NMFS' BRT and are summarized in the updated status review document (NMFS, 1998a). Copies of these documents are available upon request (see **ADDRESSES**).

A summary of comments received in response to the proposed rule follows.

Issue 1: Sufficiency and Accuracy of Scientific Information and Analysis

Comment: Some commenters questioned the sufficiency and accuracy of data NMFS employed in the listing proposal. In contrast, peer reviewers commented that the agency's status review was both credible and comprehensive, even though they may not have concurred with NMFS' conclusions.

Response: Section 4(b)(1)(A) of the ESA requires that NMFS make its listing determinations solely on the basis of the best available scientific and commercial data after reviewing the status of the species and taking into account any efforts being made to protect such species. NMFS believes that information contained in the agency's status review (Myers *et al.*, 1998), together with more recent information obtained in response to the proposed rule (NMFS, 1998a), represent the best scientific information presently available for the chinook salmon ESUs addressed in this final rule. NMFS has made every effort to conduct an exhaustive review of all available information and has solicited information and opinion from all interested parties, including peer reviewers as described previously. If new data become available to change these conclusions, NMFS will act accordingly.

Comment: Several of the comments received suggested that the ESA does not provide for the creation of ESUs, and that ESUs do not correspond to species, subspecies, or distinct population segments (DPSs) that are specifically identified in the ESA. Further, NMFS'' use of genetic information (allozyme- or DNA-derived) to determine ESU boundaries was criticized by several commenters. It was argued that allozyme-based electrophoretic data cannot be used to imply evolutionary significance, nor does it imply local adaptation. Other commenters indicated that NMFS used genetic distances inconsistently in determining the creation of ESUs. Several commenters argued that there was insufficient scientific information presented to justify the establishment of the chinook salmon ESUs discussed. Information was lacking concerning a number of ''key'' criteria for defining ESUs, such as phenotypic differences, evolutionary significance, or ecological significance of various chinook populations. Commenters contended that NMFS did not find any life history, habitat, or phenotypic characteristics that were unique to any of the ESUs discussed. Disagreement within the BRT regarding ESU delineations was also given as a reason for challenging the proposed listing decision.

Response: General issues relating to ESUs, DPSs, and the ESA have been discussed extensively in past **Federal Register** documents as described in this paragraph. Regarding application of its ESU policy, NMFS relies on its policy describing how it will apply the ESA definition of ''species'' to anadromous salmonid species published in 1991 (56 FR 58612, November 20, 1991). More recently, NMFS and FWS published a joint policy, which is consistent with NMFS'' policy, regarding the definition of ''distinct population segments'' (DPSs) (61 FR 4722, February 7, 1996). The earlier policy is more detailed and applies specifically to Pacific salmonids and, therefore, was used for this determination. This policy indicates that one or more naturally reproducing salmonid populations will be

considered to be distinct and, hence, a species under the ESA, if they represent an ESU of the biological species. To be considered an ESU, a population must satisfy two criteria: (1) It must be reproductively isolated from other population units of the same species, and (2) it must represent an important component in the evolutionary legacy of the biological species. The first criterion, reproductive isolation, need not be absolute but must have been strong enough to permit evolutionarily important differences to occur in different population units. The second criterion is met if the population contributes substantially to the ecological or genetic diversity of the species as a whole. Guidance on applying this policy is contained in a NOAA Technical Memorandum entitled ''Definition of 'Species' Under the Endangered Species Act: Application to Pacific Salmon'' (Waples, 1991) and in a more recent scientific paper by Waples (1995).

The National Research Council (NRC) has recently addressed the issue of defining species under the ESA (NRC, 1995). Their report found that protecting DPSs is soundly based on scientific evidence, and recommends applying an ''Evolutionary Unit'' (EU) approach in describing these segments. The NRC report describes the high degree of similarity between the EU and ESU approaches (differences being largely a matter of application between salmon and other vertebrates), and concluded that either approach would lead to similar DPS descriptions most of the time.

ESUs were identified using the best available scientific information. As discussed in the status review, genetic data were used primarily to evaluate the criterion regarding reproductive isolation, not evolutionary significance. In some cases, there was a considerable degree of confidence in the ESU determinations; in other cases, more uncertainty was associated with this process. Similarly, the risk analysis necessarily involved a mixture of quantitative and qualitative information and scientific judgement. NMFS' process for conducting its risk assessment has evolved over time as the amount and complexity of information has changed, and NMFS continues to seek and incorporate comments and suggestions to improve this process. NMFS believes that there is evidence to support the identification of DPSs for chinook salmon. The chinook salmon status review describes a variety of characteristics that support the ESU delineations for this species, including ecological and life history parameters. NMFS also assessed available allozyme data for the proposed ESUs and concludes that sufficient genetic differences existed between these and adjacent ESUs to support separate delineations.

Issue 2: Description and Status of Chinook Salmon ESUs

Comment: Some comments suggested that risk assessments were made in an arbitrary manner and that NMFS did not rely on the best available science. Several commenters questioned NMFS' methodology for determining whether a given chinook salmon ESU warranted listing. In some cases, such commenters also expressed opinions regarding whether listing was warranted for a particular chinook salmon ESU.

Response: Section 3 of the ESA defines the term ''endangered species'' as ''any species which is in danger of extinction throughout all or a significant portion of its range.'' The term ''threatened species'' is defined as ''any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.'' NMFS has identified a number of factors that should be considered in evaluating the level of risk faced by an ESU, including: (1) Absolute numbers of fish and their spatial and temporal distribution; (2) current abundance in relation to historical abundance and current carrying capacity of the habitat; (3) trends in abundance; (4) natural and human-influenced factors that cause variability in survival and abundance; (5) possible threats to genetic integrity (e.g., from strays or outplants from hatchery programs); and (6) recent events (e.g., a drought or changes in harvest management) that have predictable short-term consequences for abundance of the ESU. A more detailed discussion of status of individual ESUs is provided later in this document under ''Status of Chinook Salmon ESUs.''

Issue 3: Factors Contributing to the Decline of West Coast Chinook Salmon

Comment: Comments identified factors for decline that were either not identified in the status review or which they believed were not given sufficient weight in the risk analysis. For example, one commenter submitted a report to support their contention that NMFS had not addressed specific harvest regime effects on Puget Sound chinook salmon. This report (Mathews, 1997) noted that harvest of immature fish in non-terminal mixed stock fisheries results in a decrease in the average age of spawning, and causes substantial incidental mortalities in mixed stock fisheries. Other commenters contended that recent declines in chinook salmon abundance were related to natural factors such as predation and changes in ocean productivity. Furthermore, these commenters contend that NMFS did not show how the present declines were significantly different from natural variability in abundance, nor that abundances were below the current carrying capacity of the marine environment and freshwater habitat.

Response: The status review did not attempt to comprehensively identify factors for decline, except insofar as they contributed directly to the risk analysis. Comments on these issues will be considered carefully in the recovery planning process. Nevertheless, NMFS agrees that a multitude of factors, past and present, have contributed to the decline of west coast chinook salmon. Many of the identified factors were specifically cited as risk agents in NMFS's status review (Myers *et al.*, 1998) and listing proposal (63 FR 11482, March 9, 1998). NMFS recognizes that natural environmental fluctuations have likely played a role in the species' recent declines. However, NMFS believes other human-induced impacts (e.g., harvest in certain fisheries and widespread habitat modification) have played an equally significant role in the decline of these chinook salmon.

NMFS' status review briefly addressed the impact of adverse marine conditions and climate change, but concluded that there is considerable uncertainty regarding the role of these factors in chinook salmon abundance. At this time, we do not know whether these climate conditions represent a long-term shift in conditions that will continue into the future or short-term environmental fluctuations that can be expected to reverse soon. A recent review by Hare *et al.* (1999) suggests that these conditions could be part of an alternating 20- to 30-year long regime pattern. These authors concluded that, while at-risk salmon stocks may benefit from a reversal in the current climate/ocean regime, fisheries management should continue to focus on reducing impacts from harvest and artificial propagation and improving freshwater and estuarine habitats.

NMFS believes there is ample evidence to suggest that degradation of freshwater habitats has contributed to the decline of these chinook salmon ESUs. The past destruction, modification, and curtailment of freshwater habitat was reviewed in a recent NMFS assessment for steelhead (NMFS, 1996), and, more recently, for chinook salmon (NMFS, 1998b). Many of the identified risks and conclusions

apply specifically to these chinook salmon. Examples of habitat alterations affecting chinook salmon include: Water withdrawal, conveyance, storage, and flood control (resulting in insufficient flows, stranding, juvenile entrainment, and increased stream temperatures); logging and agriculture (resulting in loss of large woody debris, sedimentation, loss of riparian vegetation, and habitat simplification)(Spence *et al.*, 1996; Myers *et al.*, 1998). These human-induced impacts in freshwater ecosystems have likely reduced the species' resiliency to natural factors for decline such as drought and poor ocean conditions. A critical next step in restoring listed chinook salmon will be identifying and ameliorating specific factors for decline at both the ESU and population level.

With respect to predation issues raised by some commenters, NMFS has recently published reports describing the impacts of California sea lions and Pacific harbor seals upon salmonids and on the coastal ecosystems of Washington, Oregon, and California (NMFS, 1997 and 1999a). These reports conclude that in certain cases where pinniped populations co-occur with depressed salmonid populations, salmon populations may experience severe impacts due to predation. An example of such a situation is at the Ballard Locks, Washington, where sea lions are known to consume significant numbers of adult winter steelhead. These reports further conclude that data regarding pinniped predation are quite limited, and that substantial additional research is needed to fully address this issue. Existing information on the seriously depressed status of many salmonid stocks is sufficient to warrant actions to remove pinnipeds in areas of co-occurrence where pinnipeds prey on depressed salmonid populations (NMFS, 1997 and 1999a).

A discussion of the relationship between various hatchery stocks and native chinook salmon, and their potential role for recovery of specific ESUs follows in ''Status of Chinook Salmon ESUs''.

Issue 4: ESU Delineation and Status of Puget Sound Chinook Salmon

Comment: Some commented that chinook salmon within Puget Sound are too diverse to be combined into a single ESU. They urged that specific major river basins and life history types should be recognized as distinct chinook salmon ESUs. Conversely, other commenters believed that the Puget Sound ESU should include populations in southern British Columbia.

Several commenters were unsure of the accuracy of historical and present estimates for Puget Sound abundances. Furthermore, they argued that the total abundance of Puget Sound chinook salmon was ''relatively'' high, even with current harvest levels, and although there have been recent declines in escapement, these have been within levels of historical variation in abundance and did not warrant a threatened listing. It was unclear to the respondents why hatchery-derived fish were not included in the risk determination, especially if the BRT noted that they could not differentiate between hatchery and naturally produced fish. Some comments stressed that the majority of the trends in Puget Sound were actually stable or upward, and this situation was compared to the Mid-Columbia River spring-run chinook salmon ESU, where there were an equal number of upward and downward trends and relatively low abundance, a situation where NMFS did not propose ESA listings. Some commenters provided further information on the interpretation of fish abundances, and they argued that many of the stock abundances and trends listed in the status review contain a high proportion of hatchery fish and should not be included. These sites include areas in south Puget Sound and the Kitsap Peninsula. Some abundances for rivers in this area are not based on spawning escapements, but on a proportion of neighboring river escapements. Additionally, Puyallup River estimates are of poor quality and based upon a single peak live and dead spawner count. One commenter expressed the opinion that none of the populations with a large hatchery stray component (e.g. Elwha, Nisqually, and Duwamish/Green Rivers) should be used in the risk analysis.

Some comments suggested that the status review indicated that introductions from outside of the ESU (from Lower Columbia River hatcheries) may have had a considerable impact on the genetic characteristics of Puget Sound fish, and that this may have reduced the fitness of the genetics of Puget Sound stocks. Alternatively, another commenter accentuated the genetic diversity that exists in the Puget Sound ESU, arguing that the status review was misleading in the way that it emphasized the homogenizing effects of hatchery releases on the diversity of wild stock life history characteristics. The Washington Department of Fish and Wildlife (WDFW) and the Northwest Indian Fish Commission (NWIFC) did not disagree with the risk conclusion made by the previous BRT that the Puget Sound ESU was likely to become endangered in the foreseeable future (B. Sanford, WDFW, 600 Capitol Way N, Olympia, WA 98501–1091 , and G. Graves, NWIFC, 6730 Martin Way E., Olympia, WA 98506. Pers. commun., November, 1998).

Response: The distribution of positive and negative trends is very uneven in Puget Sound. The increasing trends are associated with populations having high hatchery influence, while downward trends are found in populations supported primarily by natural production. These data and others (e.g., declining recruit/spawner ratios in Skagit River populations) raise serious concerns about the sustainability of natural chinook salmon populations in Puget Sound. Since 1991 NMFS has made clear that although hatchery populations may be part of a salmon ESU, they are not a substitute for the conservation of natural populations in their native ecosystems. Therefore, risk analysis focuses on the health and sustainability of populations supported by natural production. This is consistent with the approach that FWS has taken under the ESA for terrestrial and freshwater species and is mandated by the ESA's focus on conserving species in their ecosystems.

New information on these issues, and on the historical and current abundance of Puget Sound chinook salmon is discussed in further detail in ''Status of Chinook Salmon ESUs''.

Issue 5: ESU Delineation and Status of the Lower Columbia River Chinook Salmon

Comment: Commenters argued that, in light of NMFS' prior determination that the Lower Columbia River coho salmon ESU did not represent a distinct species, a similar determination should have been made for Lower Columbia River chinook salmon. Other commenters concurred with NMFS' designation of the Lower Columbia River chinook salmon ESU.

Response: Even though there are uncertainties concerning the delineation and status of chinook salmon in this ESU, NMFS concludes that the available information, presented by other co-managers, meets thresholds for determining distinctness and evolutionary significance of these chinook salmon. Since at least several demonstrably native, natural populations of chinook salmon remain in the Lower Columbia River, there is no basis for concluding that the ESU does not exist.

Comment: A number of comments suggested that the abundance of some

hatchery stocks should be included in the risk determination, especially in light of the fact that many of these hatcheries contain the only representative populations from a number of river systems (which were blocked to migratory passage). A peer reviewer argued that although NMFS believes there is a potential for hatcheries to pose a risk to naturally spawning populations, there was no evidence for this to be the case. Finally, it was asserted that population abundances in this ESU are well above historical lows, and do not indicate that this ESU is in danger of extinction.

ODFW (1998) recommended that this ESU be given candidate status rather than the proposed threatened listing. Specifically, they disputed NMFS's exclusion of spring-run chinook salmon in the Sandy and Clackamas Rivers. Although these systems have received substantial introductions of fish from the upper Willamette River, ODFW (1998) argued that there is no *a priori* reason to assume that the genetic resemblance between naturally spawning fish in the Sandy and Clackamas Rivers and hatchery fish from the upper Willamette River is due to these introductions. Additionally, they also consider the several thousand upriver bright fall chinook salmon that are spawning below Bonneville Dam as part of this ESU. This population was apparently founded by strays from the upriver bright fall-run chinook salmon program at Bonneville Hatchery and are viewed by ODFW as a source of new genetic diversity. ODFW also outlined efforts to reduce the straying of Rogue River fall-run chinook salmon from the Big Creek Hatchery program. New information was provided to document the abundance of naturally spawning populations in Oregon river basins in this ESU. In all, ODFW estimated that there are some 20,000 to 30,000 natural spawners in the entire ESU.

Response: The pattern of abundance and trends in this ESU depends heavily on which populations are considered. Since 1991 NMFS has made clear that, although hatchery populations may be part of a salmon ESU, they are not a substitute for the conservation of natural populations in their native ecosystems. Therefore, risk analysis focuses on the health and sustainability of populations supported by natural production. This is consistent with the approach that FWS has taken under the ESA for terrestrial and freshwater species and is mandated by the ESA's focus on conserving species in their ecosystems. These issues are further addressed in detail in ''Status of Chinook Salmon ESUs'.

Issue 6: ESU Delineation and Status of Upper Willamette River Chinook Salmon

Comment: Commenters agreed with NMFS that an Upper Willamette River ESU should be defined, but argued that the hatchery populations should be included in the ESU and used in assessing the extinction risk. Given that NMFS had very little genetic or life history data from naturally spawning fish, and relied on information obtained from hatchery-produced fish to describe the ESU, commenters argued that hatchery fish should be considered part of the ESU for the determination of risk status. Finally, ODFW (1998) and one peer reviewer argued that hatchery abundances should be considered in the risk determination, because without hatchery operations the ESU might fail to persist. They also contend that total adult abundance is well above historical lows. Furthermore, it was suggested that the proposed ODFW Willamette Basin Fish Management Plan (WBFMP) would provide additional spawning habitat for naturally spawning fish and modify hatchery operations to minimize hatchery/wild interactions and loss of genetic integrity.

Information provided by ODFW (1998) indicated that the naturally spawning population in the McKenzie River Basin represents the last of five major populations in the ESU. Previously it had been suggested that a population in the North Santiam River existed; however, ODFW contended that the thermal profile of water releases from Detroit Dam significantly lowers the survival of any progeny from naturally spawning fish. ODFW concurred with the previous risk conclusion made by the BRT that the Upper Willamette River ESU is likely to become endangered in the foreseeable future (J. Martin, ODFW, 2501 SW First Avenue, P.O. Box 59, Portland, OR 97207. Pers. commun. November 1998).

Response: If it is true that the ESU would fail to persist without the hatchery populations, that is a strong indication that the natural populations need protection under the ESA. Also, there is no indication that the WBFMP has alleviated the risks facing these chinook salmon. In fact, Oregon's Independent Multi-disciplinary Science Team's preliminary review of the WBFMP expressed concerns related to the WBFMP's framework, effectiveness, and accountability. NMFS believes that it is too early to assess the effectiveness of this plan in reducing risks faced by spring-run chinook salmon in this ESU.

Other population-specific issues are further addressed in detail in ''Status of Chinook Salmon ESUs''.

Issue 7: ESU Delineation and Status of the Upper Columbia River Spring-Run Chinook Salmon

Comment: Several respondents agreed with NMFS that chinook salmon stocks in this ESU represent an identifiable group that merits definition as a separate ESU. A commenter contended that there was no scientific basis to exclude spring-run chinook salmon from the Rock Island Fish Hatchery Complex and Methow Fish Hatchery Complex from consideration in the risk assessment. Furthermore, commenters estimate that the total escapement of naturally spawning fish in this ESU averages around 5,000 fish, and that given the historical importance of these fish and the current ''moderate'' abundance level, a listing of ''threatened'' rather than endangered is warranted. A peer reviewer concurred with the proposed endangered listing, although he suggested that the impact of Carson National Fish Hatchery (NFH) spring-run introductions were much more limited than was indicated in the status review.

Response: Although there have been strays from the Leavenworth, Entiat, and Winthrop NFHs observed spawning naturally near the hatcheries, there is little evidence these fish have strayed into the upper portions of the watersheds or hybridized extensively with the natural populations. Marked strays from other, out-of basin, programs (e.g., Dworshak NFH) have been found on the natural spawning grounds. These issues are further addressed in detail in the ''Status of Chinook Salmon ESUs''.

Issue 8: Consideration of Existing Conservation Measures

Comment: Several comments expressed concerns about NMFS' reliance and characterization of the efficacy of the Northwest Forest Plan (NFP), citing significant differences in management practices between various Federal land management agencies.

Response: In the listing proposal, NMFS noted that the NFP requires specific management actions on Federal lands, including actions in key watersheds in Puget Sound, the Lower Columbia, and Upper Willamette Rivers that comply with special standards and guidelines designed to preserve their refugia functions for at-risk salmonids (i.e., watershed analysis must be completed prior to timber harvests and other management actions, road miles should be reduced, no new roads can be built in roadless areas, and restoration

activities are prioritized). In addition, the most significant element of the NFP for anadromous fish is its Aquatic Conservation Strategy (ACS), a regional-scale aquatic ecosystem conservation strategy that includes: (1) Special land allocations (such as key watersheds, riparian reserves, and late-successional reserves) to provide aquatic habitat refugia; (2) special requirements for project planning and design in the form of standards and guidelines; and (3) new watershed analysis, watershed restoration, and monitoring processes. These ACS components collectively ensure that Federal land management actions achieve a set of nine ACS objectives that strive to maintain and restore ecosystem health at watershed and landscape scales to protect habitat for fish and other riparian-dependent species and resources and to restore currently degraded habitats. NMFS will continue to support the NFP strategy and address Federal land management issues via ESA section 7 consultations in concert with this strategy.

Comment: Several comments expressed concern over the need to list these chinook salmon ESUs and the effects of these listings on Indian resources, programs, land management, and associated Trust responsibilities. Particular concern was expressed about the effects of listing Puget Sound chinook salmon on tribal fishing for this and other species, and further noted that the tribes had foregone significant harvest opportunities in the interest of protecting at-risk salmon stocks.

Response: NMFS believes that the best available scientific information supports listing these chinook salmon ESUs under the ESA. NMFS acknowledges that these listings may impact Indian resources, programs, land management and associated Trust responsibilities. NMFS will continue to work closely with affected Indian tribes as harvest and other management issues arise and will continue to support the development of strong and credible tribal and state conservation efforts to restore listed chinook salmon and other west coast salmon populations.

Summary of Chinook Salmon ESU Determinations

The following is a summary of NMFS' ESU determinations for the species. A more detailed discussion of ESU determinations is presented in the chinook salmon status review (Myers *et al.*, 1998) and the recent status review update (NMFS, 1998a). Copies of these documents are available upon request (see **ADDRESSES**).

NMFS also evaluated the relationship between hatchery and natural populations of chinook salmon in these ESUs. In examining this relationship, NMFS scientists consulted with hatchery managers to determine whether any hatchery populations are similar enough to native, naturally spawned fish to be considered part of the biological ESU (NMFS, 1999b).

(1) Puget Sound Chinook Salmon ESU

This ESU includes all naturally spawned chinook populations residing below impassable natural barriers (e.g., long-standing, natural waterfalls) in the Puget Sound region from the North Fork Nooksack River to the Elwha River on the Olympic Peninsula, inclusive. NMFS reviewed, and reiterates, its previous conclusions that chinook salmon in the Elwha, North Fork Nooksack, and South Fork Nooksack Rivers are part of the Puget Sound ESU, while chinook salmon populations from Southern British Columbia are not. The Puget Sound chinook salmon ESU corresponds closely to the Puget Lowland Ecoregion. Although the Elwha River chinook salmon population does fall outside this Ecoregion, its genetic and life history attributes show it is a transitional population between Washington Coast and Puget Sound ESUs. NMFS did not receive any new information that suggests its proposed determination was inaccurate.

As a result of the extensive history of artificial production in Puget Sound, it was difficult to clearly distinguish between some historic natural runs of chinook, and naturally spawning populations resulting from hatchery introductions. Based on comments received and technical meetings with co-managers, NMFS concludes that, unless there is sufficient evidence that they resulted from out-of-ESU introductions, naturally spawned populations within the geographic boundaries of the Puget Sound ESU generally should be considered part of the biological ESU. One exception is that naturally-spawning descendants from the spring-run chinook salmon program at the Quilcene National Fish Hatchery (Quilcene and Sol Duc stocks) and their progeny are not considered part of the Puget Sound ESU. NMFS believes that the inclusion of naturally spawning chinook populations founded by hatchery populations which originated from within the ESU (even if they may not be representative of the historical local stock or which may represent a mixture of within-ESU stocks) may play an important role in the recovery process. What role individual populations might play in recovery will be determined during the recovery process, taking into consideration the origin and status of the current population.

Hatchery Populations Pertaining to the ESU

NMFS identified 38 hatchery stocks associated with the Puget Sound ESU (NMFS, 1999b; Table 1).

TABLE 1.—STATUS OF PUGET SOUND CHINOOK SALMON HATCHERY STOCKS

Hatchery population	Run	In/out of ESU?	Essential for recovery?	Listed?
Kendall Ck	Spring	In	Yes	Yes.
Kendall Ck./Samish R	Fall	In	No	No.
Clark Ck	Fall	In	No	No.
Marblemount (I)	Summer	In	No	No.
Marblemount (II)	Summer	In	No	No.
Marblemount	Spring	In	No	No.
N. Fk. Stillaguamish R	Summer	In	Yes	Yes.
May Ck./Wallace R	Summer	In	No	No.
Soos Ck	Fall	In	No	No.
Tulalip Tribal	Fall	In	No	No.
Tulalip Tribal	Spring	In	No	No.
Puyallup	Fall	In	No	No.
Minter Ck	Fall	In	No	No.
Coulter Ck	Fall	In	No	No.
Keta Ck	Fall	In	No	No.
Grover's Ck	Fall	In	No	No.

TABLE 1.—STATUS OF PUGET SOUND CHINOOK SALMON HATCHERY STOCKS—Continued

Hatchery population	Run	In/out of ESU?	Essential for recovery?	Listed?
Garrison Springs	Fall	In	No	No.
Kalama Ck	Fall	In	No	No.
Nisqually (Clear Ck.)	Fall	In	No	No.
McAllister Ck	Fall	In	No	No.
Deschutes R. (WA)	Fall	In	No	No.
Little Boston Ck	Fall	In	No	No.
George Adams	Fall	In	No	No.
Hoodsport	Fall	In	No	No.
Skokomish (Enetai)	Fall	In	No	No.
Big Beef Ck	Fall	In	No	No.
Samish R	Fall	In	No	No.
Lummi Sea Ponds	Fall	In	No	No.
Bellingham Heritage	Fall	In	No	No.
Glenwood Springs	Fall	In	No	No.
Univ. of Washington	Fall	In	No	No.
Issaquah Ck	Fall	In	No	No.
White R	Spring	In	Yes	Yes.
Sol Duc	Spring	Out	No	No.
Finch Ck	Fall	In	No	No.
Quilcene R	Spring	Out	No	No.
Dungeness R	Spring	In	Yes	Yes.
Elwha R	Fall	In	Yes	Yes.

NMFS has revised the criteria used by the BRTs to decide whether or not a hatchery population is part of the biological ESU. Details of these new criteria are discussed in the ''Evaluation of the Status of Chinook and Chum Salmon and Steelhead Hatchery Populations for ESUs Identified in Final Listing Determinations'' memo (NMFS, 1999b). After reviewing the best available information regarding the relationship between hatchery and natural populations in this ESU, NMFS concludes that 36 hatchery stocks should be considered part of the ESU. The listing status of the hatchery stocks is described later in this document under ''Status of Chinook Salmon ESUs.''

(2) Lower Columbia River Chinook Salmon ESU

This ESU includes all naturally spawned chinook populations residing below impassable natural barriers (e.g., long-standing, natural waterfalls) from the mouth of the Columbia River to the crest of the Cascade Range just east of the Hood River in Oregon and the White Salmon River in Washington. This ESU excludes populations above Willamette Falls, and others as specifically noted in the discussion that follows. Within this ESU, there are historic runs of three different chinook salmon populations: spring-run, tule, and late-fall ''bright'' chinook salmon.

NMFS discussed at length the status of several chinook salmon populations in the Lower Columbia River. As discussed in the preceding ESU section, because of the extensive history of artificial production in the Lower Columbia River, it was difficult to clearly distinguish between historic natural runs of chinook, and naturally spawning populations resulting from hatchery introductions. Based on comments received and technical meetings with co-managers, NMFS concludes that, unless there is sufficient evidence that they resulted from out-of-ESU introductions, naturally spawned populations within the geographic boundaries of the Lower Columbia River ESU generally should be considered part of the biological ESU. NMFS believes that the inclusion of naturally spawned chinook populations founded by hatchery populations which originated from within the ESU (even if they may not be representative of the historical local stock or which may represent a mixture of within-ESU stocks) may play an important role in the recovery process. What role individual populations might play in recovery will be determined during the recovery process, taking into consideration the origin and status of the current population.

NMFS concludes that, based on new information received since the proposed rule, although fish introduced from the Upper Willamette River ESU have probably interbred with indigenous spring-run chinook salmon in the Sandy River, this population still retains some genetic characteristics from the native population. In light of the extirpation of the majority of the spring-run populations in this ESU and despite the history of introductions from outside of the ESU, this population may be an important genetic resource and is considered part of the Lower Columbia River ESU. In contrast, naturally spawned Clackamas River spring-run chinook salmon are considered part of the Upper Willamette River ESU, and the fall-run fish, descended from Upper Columbia River Bright hatchery stocks, that spawn in the mainstem Columbia River below Bonneville Dam and in other Bonneville Pool tributaries (Lower River brights) are considered part of the Upper Columbia River summer- and fall-run ESU. Not included in this ESU are spring-run chinook salmon derived from the Round Butte Hatchery (Deschutes River, Oregon) (and their progeny) and spawning in the Hood River, spring-run chinook salmon derived from the Carson NFH (and their progeny) and spawning in the Wind River, and naturally spawning fish originating from the Rogue River fall chinook program (and their progeny).

Hatchery Populations Pertaining to the ESU

NMFS identified 23 hatchery stocks associated with the Lower Columbia River ESU (NMFS, 1999b; Table 2).

TABLE 2.—STATUS OF LOWER COLUMBIA RIVER CHINOOK SALMON HATCHERY STOCKS

Hatchery population	Run	In/out of ESU?	Essential for recovery?	Listed?
Sea Resources Net Pens	Fall	In	No	No.
Abernathy SCTC	Fall	In	No	No.
Grays R	Fall	In	No	No.
Elochomin	Fall	In	No	No.
Cowlitz R	Spring	In	Yes	No
Cowlitz R	Fall	In	No	No.
Toutle R	Fall	In	No	No.
Kalama R	Spring	In	No	No.
Kalama R	Fall	In	No	No.
Lewis R	Spring	In	No	No.
Washougal R	Fall	In	No	No.
Carson NFH	Spring	Out	No	No.
Little White Salmon R	Fall	Out	No	No.
Spring Ck. NFH	Fall	In	No	No.
Klickitat R	Fall	Out	No	No.
Youngs Bay	Spring	Out	No	No.
Big Ck. (13)	Fall	In	No	No.
Rogue R (52)	Fall	Out	No	No.
Klaskanine R	Spring	Out	No	No.
Klaskanine R (15)	Fall	In	No	No.
Bonneville H. URB (95)	Fall	Out	No	No.
Sandy R (Clackamas 19)	Spring	Out	No	No.
Hood River (66)	Spring	Out	No	No.

After reviewing the best available information regarding the relationship between hatchery and natural populations in this ESU, NMFS concludes that 14 hatchery stocks should be considered part of the ESU and the remaining nine stocks not part of the ESU (Table 2). The listing status of the hatchery stocks is described later in this document under ''Status of Chinook Salmon ESUs.''

(3) Upper Willamette River Chinook Salmon ESU

NMFS reviewed its previous decision on the proposed designation of the Upper Willamette River ESU. Information provided by ODFW (1998) indicates that at present the only significant natural production of spring-run chinook salmon occurs in the McKenzie River Basin. Previously, Nicholas *et al.* (1995) had also suggested that a self-sustaining population may exist in the North Santiam River Basin. In general, NMFS considers that naturally spawned spring-run chinook salmon are part of the ESU, unless it can be shown to have originated from outside of the ESU. NMFS specifically excludes fall-run chinook salmon from this ESU. Fall-run fish are not native to the basin, having been introduced above Willamette Falls on several occasions throughout this century and, therefore, are not part of this ESU. NMFS did not determine to which ESU, if any, these fall-run fish belong.

As previously described, NMFS concludes that the presently naturally spawned population of spring-run chinook salmon in the Clackamas River derives from this ESU. NMFS could not determine, based on available information, whether this represents an historical affinity or a recent, human-mediated expansion into the Clackamas River. In any case, the current Clackamas River population represents a genetic resource that might be useful in the recovery of the Upper Willamette River ESU.

Hatchery Populations Pertaining to the ESU

NMFS identified 6 hatchery stocks associated with the Upper Willamette River ESU (NMFS, 1999b; Table 3).

TABLE 3.—STATUS OF UPPER WILLAMETTE RIVER CHINOOK SALMON HATCHERY STOCKS

Hatchery population	Run	In/out of ESU?	Essential for recovery?	Listed?
N. Fk. Santiam R. (21)	Spring	In	No	No.
M. Fk. Willamette R. (22)	Spring	In	No	No.
McKenzie R. (23)	Spring	In	No	No.
S. Fk. Santiam R. (24)	Spring	In	No	No.
Clackamas R. (19)	Spring	In	No	No.
Stayton Ponds (14)	Fall	Out	No	No.

After reviewing the best available information regarding the relationship between hatchery and natural populations in this ESU, NMFS concludes that all but the Stayton Ponds hatchery stock should be considered part of the ESU (Table 3). The listing status of the hatchery stocks is described later in this document under ''Status of Chinook Salmon ESUs.''

(4) Upper Columbia River Spring-run Chinook Salmon ESU

Although the spring-run chinook salmon populations in this ESU were effectively homogenized during the implementation of the Grand Coulee Fish Management Program (GCFMP) (1939–1943), NMFS concurs with its previous conclusion that this ESU contains the only remaining genetic resources of those spring-run chinook

salmon that migrated into the upper Columbia River Basin (including fish that would have spawned in Canada) and is distinct from other stream-type chinook salmon ESUs. After considering information provided by co-managers, NMFS determined that naturally spawning spring-run chinook salmon (and their progeny) derived from Carson NFH are not part of this ESU. Hatchery Populations Pertaining to the ESU

NMFS identified 10 hatchery stocks associated with the Upper Columbia River spring-run ESU (NMFS, 1999b; Table 4).

TABLE 4.—STATUS OF UPPER COLUMBIA RIVER SPRING-RUN CHINOOK SALMON HATCHERY STOCKS

Hatchery population	Run	In/out of ESU?	Essential for recovery?	Listed?
Winthrop NFH	Spring	Out	No	No.
Entiat NFH	Spring	Out	No	No.
Leavenworth NFH	Spring	Out	No	No.
Chiwawa R.	Spring	In	Yes	Yes.
Methow R.	Spring	In	Yes	Yes.
Twisp R.	Spring	In	Yes	Yes.
Chewuch R.	Spring	In	Yes	Yes.
White R.	Spring	In	Yes	Yes.
Nason Cr.	Spring	In	Yes	Yes.
Ringold H.	Spring	Out	No	No.

After reviewing the best available information regarding the relationship between hatchery and natural populations in this ESU, NMFS concludes that six hatchery stocks should be considered part of the ESU and the remaining four stocks not part of the ESU (Table 4). The listing status of the hatchery stocks is described later in this document under ''Status of Chinook Salmon ESUs.''

Summary of Factors Affecting Chinook Salmon

Section 4(a)(1) of the ESA and NMFS' listing regulations (50 CFR part 424) set forth procedures for listing species. The Secretary of Commerce (Secretary) must determine, through the regulatory process, if a species is endangered or threatened based upon any one or a combination of the following factors: (1) The present or threatened destruction, modification, or curtailment of its habitat or range; (2) overutilization for commercial, recreational, scientific, or educational purposes; (3) disease or predation; (4) inadequacy of existing regulatory mechanisms; or (5) other natural or human-made factors affecting its continued existence.

The factors threatening naturally spawned chinook salmon throughout its range are numerous and varied. The present depressed condition is the result of several long-standing, human-induced factors (e.g., habitat degradation, water diversions, harvest, and artificial propagation) that serve to exacerbate the adverse effects of natural environmental variability from such factors as drought, floods, and poor ocean conditions.

As noted earlier, NMFS received numerous comments regarding the relative importance of various factors contributing to the decline of chinook salmon. A summary of various risk factors and their roles in the decline of west coast chinook salmon was presented in NMFS' March 9, 1998, proposed rule (63 FR 11482), as well as in several ''Factors for Decline'' reports published in conjunction with proposed rules for steelhead and for chinook (NMFS, Factors Contributing to the Decline of Chinook Salmon: An Addendum to the 1996 West Coast Steelhead Factors for Decline Report, June, 1998 (NMFS 1998b); NMFS, Factors for Decline: A Supplement to the Notice of Determination for West Coast Steelhead Under the Endangered Species Act, 1996, NMFS, 1996).

Efforts Being Made To Protect West Coast Chinook Salmon

Under section 4(b)(1)(A) of the ESA, the Secretary of Commerce is required to make listing determinations solely on the basis of the best scientific and commercial data available and after taking into account efforts being made to protect a species. During the status review for west coast chinook salmon and for other salmonids, NMFS reviewed protective efforts ranging in scope from regional strategies to local watershed initiatives; some of the major efforts are summarized in the March 9, 1998, proposed rule (63 FR 11482). Since then, NMFS has received some new information regarding these and other efforts being made to protect chinook salmon. Notable efforts within the range of the chinook ESUs proposed for listing continue to be the NFP, PACFISH, Lower Columbia River National Estuary Program, Lower Columbia Steelhead Conservation Initiative, Oregon Plan for Salmon and Watersheds, Washington Wild Stock Restoration Initiative, and Washington Wild Salmonid Policy.

An additional Federal effort affecting the Upper Columbia River spring-run chinook salmon ESU, the Interior Columbia Basin, Ecosystem Management Project (ICBEMP), was not addressed in the proposed rule. The ICBEMP addresses Federal lands in this region that are managed under U.S. Forest Service (USFS) and Bureau of Land Management (BLM) Land and Resource Management Plans (LRMPs) or Land Use Plans which are amended by PACFISH. PACFISH provides objectives, standards and guidelines that are applied to all Federal land management activities such as timber harvest, road construction, mining, grazing, and recreation. USFS and BLM implemented PACFISH in 1995 and intended it to provide interim protection to anadromous fish habitat while a longer term, basin scale aquatic conservation strategy was developed in the ICBEMP. It is intended that ICBEMP will have a Final Environmental Impact Statement and Record of Decision by early 2000.

For other ESUs already listed in the Interior Columbia Basin (e.g., Snake River chinook, Snake River steelhead, Upper Columbia River steelhead), NMFS' ESA section 7 consultations have required several components that are in addition to the PACFISH strategy (NMFS, 1995; NMFS, 1998c). NMFS, USFS, and BLM intend these additional components to bridge the gap between interim PACFISH direction and the longterm strategy envisioned for ICBEMP. NMFS anticipates that these components will also be carried forward in the ICBEMP direction. These components include (but are not limited to) implementation monitoring and

accountability, a system of watersheds that are prioritized for protection and restoration, improved and monitored grazing systems, road system evaluation and planning requirements, mapping and analysis of unroaded areas, multi-year restoration strategies, and batching and analyzing projects at the watershed scale. Given the timeframe for ICBEMP, NMFS will likely conduct similar additional section 7 consultations for the LRMPs within the Upper Columbia River spring-run chinook salmon ESU and will then consult on ICBEMP when it is complete.

In the range of the Lower Columbia and Willamette River ESUs, several notable efforts have recently been initiated. Harvest, hatchery, and habitat protections under state control are evolving under the Oregon Plan for Salmon and Watersheds (Plan). The plan is a long-term effort to protect all at-risk wild salmonids through cooperation between state, local and Federal agencies, tribal governments, industry, private organizations and individuals. Parts of the Plan are already providing benefits including an aggressive program by the Oregon Department of Transportation to inventory, repair, and replace road culverts that block fish from reaching important spawning and rearing areas. The Plan also encourages efforts to improve conditions for salmon through non-regulatory means, including significant efforts by local watershed councils. An Independent Multi disciplinary Science Team provides scientific oversight to plan components and outcomes. A recent Executive Order from Governor Kitzhaber reinforced his expectation that all state agencies will make improved environmental health and salmon recovery part of their mission.

Protecting and restoring fish and wildlife habitat and population levels in the Willamette River Basin, promoting proper floodplain management, and enhancing water quality is the focus of the recently formed Willamette Restoration Initiative (WRI). The WRI creates a mechanism through which residents of the basin are mounting a concerted, collaborative effort to restore watershed health. In addition, habitat protection and improved water quality in the Portland/Vancouver metropolitan areas are getting unprecedented attention from local jurisdictions. The regional government, Metro, recently adopted an aggressive stream and floodplain protection ordinance designed to protect functions and values of floodplains, and natural stream and adjacent vegetated corridors. All jurisdictions in the region must amend their land use plans and implementing ordinances to comply with the Metro ordinance within 18 months. Metro also has a Green spaces acquisition program that addresses regional biodiversity, and is giving protection to significant amounts of land, some of it on the Sandy River or on tributaries to the Willamette River. The City of Portland has identified those activities which impact salmonids and is now using that information to reduce impacts of existing programs and to identify potential enhancement actions. The City will shortly be making significant improvements in its storm water management program, a key to reducing impacts on salmonid habitat.

Across the Columbia River in Washington State, critical riparian areas are being acquired and preserved under Clark County's Conservation Futures Open Space Program. This program is entirely locally funded and has already acquired more than 2,000 acres of habitat critical to numerous fish and wildlife species. Improvements to the county's Critical Areas Ordinance are also under consideration and an 18 member task force has been formed to develop a salmonid recovery plan. Also, an inventory of factors limiting salmonid survival is being compiled for individual lower Columbia River watersheds in Washington State by the Lower Columbia River Fish Recovery Board. Established by the State Legislature, the Board will begin using this information later this year to help prioritize and implement improved land-use regulations and habitat restoration activities over a five-county area.

In the lower Columbia River, salmonid populations were seriously depleted long before increasing predator populations posed any significant threat to their long-term survival. Various development and management actions have interrupted the natural balance between predator and prey populations, and this situation now poses a risk to struggling salmonid populations. For example, steps have already been taken this year by the U.S. Army Corps of Engineers (COE), FWS, Oregon and Washington Fish and Wildlife agencies and NMFS to relocate at least 90 percent of a Caspian tern colony away from areas in the lower Columbia where their primary food is juvenile salmonids.

NMFS and FWS are also engaged in an ongoing effort to assist in the development of multiple species Habitat Conservation Plans (HCPs) for state and privately owned lands in Oregon and Washington. While section 7 of the ESA addresses species protection associated with Federal actions and lands, Habitat Conservation Planning under section 10 of the ESA addresses species protection on private (non-Federal) lands. HCPs are particularly important since well over half of the habitat in the range of the Puget Sound, Lower Columbia River, and Upper Willamette spring-run chinook ESUs is in non-Federal ownership. The intent of the HCP process is to ensure that any incidental taking of listed species will not appreciably reduce the likelihood of survival of the species, reduce conflicts between listed species and economic development activities, and to provide a framework that would encourage ''creative partnerships'' between the public and private sectors and state, municipal, and Federal agencies in the interests of endangered and threatened species and habitat conservation.

NMFS will continue to evaluate state, tribal, and non-Federal efforts to develop and implement measures to protect and begin the recovery of chinook salmon populations within these ESUs. Because a substantial portion of land in these ESUs is in state or private ownership, conservation measures on these lands will be key to protecting and recovering chinook salmon populations in these ESUs. NMFS recognizes that strong conservation benefits will accrue from specific components of many non-Federal conservation efforts.

While NMFS acknowledges that many of the ongoing protective efforts are likely to promote the conservation of chinook salmon and other salmonids, some are very recent and few address salmon conservation at a scale that is adequate to protect and conserve entire ESUs. NMFS concludes that existing protective efforts are inadequate to preclude a listing for the Puget Sound, Upper Columbia River spring-run, Lower Columbia River, and Upper Willamette River ESUs. However, NMFS will continue to encourage these and future protective efforts and will work with Federal, state, and tribal fisheries managers to evaluate, promote, and improve efforts to conserve chinook salmon populations.

Status of Chinook Salmon ESUs

Section 3 of the ESA defines the term ''endangered species'' as ''any species which is in danger of extinction throughout all or a significant portion of its range.'' The term ''threatened species'' is defined as ''any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.'' Thompson (1991) suggested that conventional rules of thumb, analytical

approaches, and simulations may all be useful in making this determination. In previous status reviews (e.g., Weitkamp *et al.,* 1995), NMFS has identified a number of factors that should be considered in evaluating the level of risk faced by an ESU, including: (1) absolute numbers of fish and their spatial and temporal distribution; (2) current abundance in relation to historical abundance and current carrying capacity of the habitat; (3) trends in abundance; (4) natural and human-influenced factors that cause variability in survival and abundance; (5) possible threats to genetic integrity (e.g., from strays or outplants from hatchery programs); and (6) recent events (e.g., a drought or changes in harvest management) that have predictable short-term consequences for abundance of the ESU.

During the coastwide status review for chinook salmon, NMFS evaluated both quantitative and qualitative information to determine whether any proposed ESU is threatened or endangered according to the ESA. The types of information used in these assessments are described in the proposed rule, published March 9, 1998 (63 FR 11482). The assessments also considered whether any of the hatchery populations identified in ''Summary of Chinook Salmon ESU Determinations'' should be considered essential for the recovery of a listed ESU. The following summaries draw on these quantitative and qualitative assessments to describe NMFS' conclusions regarding the status of each chinook salmon ESU. A more detailed discussion of the status of these chinook salmon ESUs is presented in the updated status review (NMFS, 1998a).

(1) Puget Sound Chinook Salmon ESU

Updated abundance information through 1997–98 was obtained for almost all streams in the Puget Sound ESU. Recent estimated escapements of chinook salmon to rivers in this ESU ranged from 38 spring/summer-run chinook salmon in the Dungeness River to almost 7,000 summer/fall chinook salmon in the Skagit River Basin. Most of the 36 streams with data available continue to exhibit declines in estimated abundance. Seven of the 10 streams with positive trends in abundance are considered to be influenced by hatchery fish. Both long- and short-term trends for natural chinook salmon runs in North Puget Sound were negative, with few exceptions. In South Puget Sound, both long- and short-term trends in abundance were predominantly positive (NMFS, 1998a).

Estimating historic abundance is difficult. Bledsoe *et al.* (1989) estimated that the total Puget Sound catch in 1908 was approximately 670,000 fish (based on a catch of 2.1 million kg.), at a time when both ocean harvest and hatchery production were negligible. This estimate, as with other historical estimates, should be viewed cautiously. Puget Sound cannery pack probably included a portion of fish landed at Puget Sound ports but originating in adjacent areas, and cannery pack represents only a portion of the total catch. Also, the estimates of exploitation rates used in run-size expansions are not based on precise data. Recent mean spawning escapements totaling 71,000 correspond to a naturally spawning escapement entering Puget Sound of approximately 160,000 fish based on run reconstruction of escapement and commercial landings within Puget Sound (Big Eagle and LGL, 1995). Expanding this estimate by the fraction of 1982–1989 average total harvest mortalities of Puget Sound chinook salmon stocks in intercepting ocean fisheries (exclusive of U.S. net fisheries) and U.S. recreational fisheries would yield a recent average potential run size of 426,000 chinook salmon (both hatchery and wild adults) into Puget Sound (Pacific Salmon Commission (PSC) 1994, appendices F and G).

Currently, escapement to rivers in Puget Sound and Hood Canal is monitored by WDFW and the Northwest Indian tribes. The Nooksack River has spring/summer-runs in the north and south forks. Escapement to the South Fork is monitored by redd counts, and the stock is believed to have little hatchery influence. Both stocks were rated as ''critical'' by WDFW because of chronically low spawning escapements. The Skagit River supports three spring-runs, two summer-runs and a fall-run. Mean spawning escapement of the summer/fall-run has been almost 7,000 fish and has been declining (NMFS, 1998a). Of the six stocks in the Skagit River Basin identified by WDF *et al.* (1993), two are rated healthy, three depressed, and one of unknown status. On the Stillaguamish River, the combined escapement goal has been met only twice since 1978, and the most recent mean abundance consisted of just over 1,000 fish (NMFS, 1998a). Both runs were rated as ''depressed'' by WDFW (WDF *et al.,* 1993). Of four runs identified in the Snohomish River system, two are rated depressed, one unknown, and one as healthy. Although estimating Puget Sound chinook escapement is complicated by large numbers of naturally spawning hatchery fish, populations least affected by hatcheries are in the northern part of the sound in the Nooksack, Skagit, Stillaguamish, and Snohomish River systems.

In Hood Canal, summer/fall-run chinook salmon spawn in the Skokomish, Union, Tahuya, Duckabush, Dosewallips and Hamma Hamma Rivers. Because of transfers of hatchery fish, these spawning populations are considered to be a single stock (WDF *et al.,* 1993). Fisheries in the area are managed primarily for hatchery production and secondarily for natural escapement; high harvest rates directed at hatchery stocks have resulted in failure to meet natural escapement goals in most years (FWS, 1997). The 5-year geometric mean natural spawning escapement has been just over 1,000 (NMFS, 1998a), with negative short- and long-term trends.

The ESU also includes the Dungeness and Elwha Rivers, which have natural chinook salmon runs as well as hatcheries. The Dungeness River has a run of spring/summer-run chinook salmon with a 5-year geometric mean natural escapement of only 38 fish (NMFS, 1998a). WDFW maintains a captive broodstock program using offspring from local redds on the Dungeness River because of the severely depressed numbers (Crawford, 1998). The Elwha River has a 5-year geometric mean escapement of just over 1,500 fish (NMFS 1998a), but it contains two hatcheries, both lacking adequate adult recovery facilities. Egg take at the hatcheries is augmented from natural spawners, and hatchery fish are known to spawn in the wild. Consequently, hatchery and natural spawners are not considered discrete stocks (WDF *et al.,* 1993). Both the Dungeness and Elwha River populations exhibit severely declining recent trends in abundance (NMFS, 1998a). Furthermore, only limited accessible spawning habitat remains in the Elwha River Basin, and it is uncertain whether the existing population could persist without hatchery intervention.

As reported in the status review (Myers *et al.,* 1998), a substantial amount of habitat throughout the Puget Sound region has been degraded or blocked by dams and other barriers. In general, upper tributaries have been negatively affected by forest practices and lower tributaries and mainstem rivers have been impacted by agriculture and/or urbanization. Diking for flood control, draining and filling of freshwater and estuarine wetlands, and sedimentation due to forest practices and urban development are cited as problems throughout the ESU (WDF *et*

al., 1993). Blockages by dams, water diversions, and shifts in flow regime due to hydroelectric development and flood control projects are major habitat problems in several basins (Bishop and Morgan, 1996; Puget Sound Salmon Stock Review Group, 1997). Increasing percentages of land in the Puget Sound area are composed of impermeable surfaces, and the reductions in habitat quality due to point-and non-point source pollutants have been widespread (McCain *et al.*, 1988; Puget Sound Water Quality Authority, 1988; Palmisano *et al.*, 1993), and the direct and indirect impacts of the reduction in habitat quality on chinook salmon have just begun to be explored. For example, recent research has shown that juvenile chinook salmon from a contaminated estuary in Puget Sound are more susceptible to disease pathogens than are juvenile chinook salmon from a non-urban estuary (Arkoosh *et al.*, 1998a and 1998b).

Harvest impacts on Puget Sound chinook salmon stocks have been quite high in the past. Ocean exploitation rates on natural stocks averaged 56–59 percent; total exploitation rates on some stocks have exceeded 90 percent (PSC, 1994). Although total exploitation rates averaged 68–83 percent for the 1982–89 brood years (PSC, 1994), there is some evidence they have decreased in the past 3 to 4 years (Peter Dygert, NMFS, 7600 Sand Point Way N.E. Seattle, WA 98115–0070. Pers. comm., February 18, 1998). Recent changes in hatchery management practices may include a program to mass mark hatchery chinook salmon with adipose fin clips (Bruce Sanford, WDFW, 600 Capitol Way N, Olympia, WA 98501–1091. Pers. comm., November, 1998). The mass marking program is designed to assist managers in implementing selective fisheries. The enhanced ability to visually identify chinook salmon of hatchery origin in fisheries and for spawning ground surveys may be a positive outcome of the mass marking program. However, there are questions about our ability to accurately measure hooking mortality of natural spawners in multiple hook and release fisheries.

Moreover, as a byproduct of a proposed mass-marking strategy, a small fraction of hatchery-origin chinook salmon would receive coded-wire tags but would not have their adipose fins removed, in order to estimate the behavior of naturally produced chinook salmon in selective fisheries. Therefore, NMFS believes that technical difficulties may increase in detecting coded-wire tagged chinook salmon as a result of changes in the adipose marking program. In addition, valuable stock-specific abundance and mortality schedule information for chinook salmon may be more difficult to obtain if recovery of coded-wire tags is compromised under the new management practices.

NMFS' concerns about the status of this ESU are related to risks associated with population trends and productivity. NMFS believes that widespread declines and outright losses of the spring- and summer-run chinook populations represent a significant reduction in the life history diversity of this ESU. Additionally, NMFS is concerned about the significant declines in abundance from historical levels in many streams in Puget Sound. The population sizes in many streams are small enough that stochastic genetic and demographic processes are important risk factors. Two of the three largest remaining chinook salmon runs in this ESU that are not heavily influenced by hatchery fish (Skagit and Snohomish Rivers) are declining in abundance. Indeed, in most streams for which abundance data are available, both long- and short-term trends in abundance are declining.

Degradation and loss of freshwater and estuarine habitat throughout the range of the ESU were additional sources of risk to chinook salmon in Puget Sound identified by NMFS. Furthermore, recent studies suggest that effects of pollutants on early life history stages of chinook salmon also contribute to the stress on fish in this ESU. Historically high harvest rates in ocean and Puget Sound fisheries were likely to be a significant source of risk in the past; NMFS is hopeful that recently established lower harvest targets for Puget Sound stocks will reduce threats to the persistence of the ESU due to reductions in direct mortality and size-selective fisheries.

Hatchery chinook salmon are widespread in the Puget Sound ESU, although there are no precise estimates of the proportion of natural spawners of hatchery origin. NMFS found that although chinook salmon are relatively well-distributed geographically in the Puget Sound region, the extensive transplanting of hatchery fish throughout the area makes identifying native, naturally self-sustaining runs difficult. Recent proposals to mass mark hatchery fish may be helpful in assessing the status and managing abundance of fish in this ESU. However, the resulting technical difficulties associated with detecting coded-wire tagged fish under the new marking design may hinder collection efforts for that important data base and compromise the management tools currently used to manage chinook salmon in Canadian and U. S. fisheries.

Listing Determination

Based on available information, NMFS concludes that chinook salmon in the Puget Sound ESU are not presently in danger of extinction, but they are likely to become endangered in the foreseeable future. Therefore, NMFS determines that Puget Sound chinook salmon warrant listing as a threatened species under the ESA. In this ESU, all naturally spawned populations of chinook salmon residing below impassable natural barriers (e.g., long-standing, natural waterfalls) are listed. This ESU does not include naturally spawning descendants from the spring-run chinook salmon program at the Quilcene National Fish Hatchery (Quilcene and Sol Duc stocks) and their progeny.

Status of Hatchery Populations

NMFS concludes that five of the hatchery chinook salmon stocks identified as part of this ESU (see ''Summary of Chinook Salmon ESU Determinations'') should be listed (as well as their progeny) since they are currently essential for the its recovery (NMFS, 1999b; Table 1). The listed hatchery stocks are: Kendall Creek (spring run); North Fork Stillaguamish River (summer run); White River (spring run); Dungeness River (spring run); and Elwha River (fall run).

(2) Lower Columbia River Chinook Salmon

Updated abundance information through 1997–98 was obtained for many streams in the Lower Columbia River ESU. Smaller tributary streams in the lower reaches of the Columbia River (e.g., Big, Skamokawa and Gnat Creeks, and Elochoman, Youngs, Klaskanine, and Grays Rivers) support naturally-spawning chinook salmon runs numbering in the hundreds of fish. The larger tributaries, such as the Cowlitz River Basin streams, contain natural runs of chinook salmon ranging in size from 100 to almost 1,000 fish (NMFS, 1998a). It is difficult to obtain precise estimates of natural escapements in many streams within the lower Columbia River Basin because of the presence of hatchery chinook salmon in many areas. Almost all of the streams with data available are exhibiting declines in estimated abundance. All of the streams considered to be influenced by hatchery fish in this ESU are declining in abundance.

Estimates of historic abundance are available for only a few streams in this ESU, but there is widespread agreement

that natural production has been substantially reduced over the last century. In addition to fall-run chinook salmon, this ESU also includes spring-run chinook salmon in the Cowlitz, Lewis, Kalama, and Sandy Rivers. Historical estimates of spring-run chinook salmon escapement into the Cowlitz River Basin are available for the early 1950s (WDF, 1951; Fulton, 1968). The estimated total escapement of spring-run chinook salmon was 10,400 to the Cowlitz River, and this total was distributed as 1,700 spring-run chinook salmon into the mainstem Cowlitz River, 8,100 into the Cispus River, and 200 and 400 fish into the Tilton and Toutle Rivers, respectively (WDF, 1951). The historical estimate of spring-run chinook salmon escaping into the Sandy River in the 1950s was 1,000 fish (Fulton, 1968), although it may have been as high as 12,000 fish historically (Mattson, 1955). Recent abundance of spawners through 1996–97 includes a 5-year geometric mean natural spawning escapement of only 3,600 spring-run fish in the entire ESU (NMFS, 1998a).

Historical estimates of fall-run chinook salmon in the Lower Columbia River ESU also are available for the early 1950s in the Cowlitz River Basin (WDF, 1951; Fulton, 1968). The estimated total escapement of fall-run chinook salmon to the Cowlitz River was 31,000 fish, of which 10,900 were estimated to escape to the mainstem Cowlitz River, 8,100 to the Cispus River, 6,500 to the Toutle River, 5,000 to the Coweeman River, and 500 to the Tilton River (WDF, 1951). In addition, estimates of fall-run chinook salmon into the smaller tributaries in the lower Columbia River (i.e., Klaskanine, Elochoman, Clatskanie Rivers and Big and Gnat Creeks) was a total of 4,000 fish (Fulton, 1968). Fulton (1968) also provided estimates of escapement of fall-run chinook into the Lewis (n=5,000), Washougal (n=3,000) and the Kalama (n=20,000) Rivers for the 1950s. Based on these reports, it is possible to estimate historical abundance in the ESU of at least 63,000 fall-run chinook salmon escaping to spawn in the lower Columbia River region in the 1950s. It is important to note that by the 1950s the Lower Columbia River chinook salmon stocks had already declined considerably from pre-European settlement levels, and hatchery production was already substantial.

Currently, spawning escapement to populations on the Washington side of the Columbia River are monitored primarily by peak fish counts in index areas (WDF *et al.*, 1993). Estimates of spring- and fall-runs to the mainstem Columbia River tributaries are routinely reported by fishery management agencies (WDFW and ODFW, 1994; (Pacific Fisheries Management Council (PFMC), 1996). Peak index area spawning counts are expanded to estimate total spawning escapement. In most lower Columbia River tributaries in Oregon, foot surveys are conducted and escapement estimates are based on peak spawner counts or redd counts (Theis and Melcher, 1995), and dam counts are available for the Sandy River. Data through 1996–97 indicate that the lower Columbia River fall-run currently includes 34,000 natural spawners (NMFS, 1998a), but according to the PFMC (1996b), approximately 68% of the natural spawners are first-generation hatchery strays. Long-term trends in escapement for the fall- and spring-run are mixed, with most larger stocks showing positive trends (NMFS, 1998a). Short-term trends in abundance for both runs are more negative. The only remaining spring-run chinook salmon populations that are not showing severe declines in abundance are those on the Sandy and Hood Rivers (NMFS, 1998a), and these are both heavily influenced by hatchery fish; in addition, the spring-run in the Hood River may not be representative of the native stock (Kostow *et al.*, 1995).

All basins are affected to varying degrees by habitat degradation. Major habitat problems are related primarily to blockages, forest practices, urbanization in the Portland and Vancouver areas, and agriculture in floodplains and low-gradient tributaries.

Hatchery programs to enhance chinook salmon fisheries in the lower Columbia River began in the 1870s, expanded rapidly, and have continued throughout this century. Although the majority of the stocks have come from within this ESU, over 200 million fish from outside the ESU have been released since 1930 (Myers *et al.*, 1998). Available evidence indicates a pervasive influence of hatchery fish on natural populations throughout this ESU, including both spring- and fall-run populations (Howell *et al.*, 1985; Marshall *et al.*, 1995). In addition, the exchange of eggs among hatcheries in this ESU apparently has led to extensive genetic homogenization of hatchery stocks (Utter *et al.*, 1989). A particular concern at the time the status review was prepared is the straying by Rogue River fall-run chinook salmon, large numbers of which are released into the lower Columbia River to augment harvest opportunities (Myers *et al.*, 1998). Beginning in 1997, ODFW began restricting the release sites of the Rogue River hatchery fall-run chinook salmon to Youngs Bay in the Lower Columbia River, where an intensive chinook salmon fishery occurs (ODFW, 1998). ODFW hopes that reducing the number of sites where the Rogue River fish are released and targeting those hatchery fish in an active chinook salmon fishery will reduce the incidence of straying of non-ESU fish into lower Columbia River tributaries (ODFW, 1998). There are no indications of the success of this mitigation at this time.

ODFW provided NMFS with an overview of the conservation status of Lower Columbia River chinook salmon stocks (ODFW, 1998). ODFW identified the chinook salmon populations in the Lower Columbia River ESU that were naturally self-sustaining and provided their best estimate of the conservation status of each population and the percentage of hatchery fish in natural spawning escapements. The list of populations included fall-run chinook salmon on the Sandy, Clackamas, White Salmon, Wind, North Fork Lewis, East Fork Lewis, Coweeman and mainstem Columbia Rivers. Estimated average minimum escapements over the last 5 years for fall-runs ranged from 100 to 11,600, and the estimated percentages of hatchery fish in natural spawning escapements ranged from 0 to 8 percent (ODFW, 1998). Spring-run chinook salmon populations identified were those in the Sandy and Clackamas Rivers. Estimated escapements ranged from 3,000 to 3,700 fish, and the estimated percentage of spawners of hatchery origin ranged from 10–50 percent (ODFW, 1998).

NMFS' concerns regarding the status of this ESU were evenly divided among the abundance/distribution, trends/productivity and genetic integrity risk categories. NMFS was concerned that there are very few naturally self-sustaining populations of native chinook salmon remaining in the lower Columbia River ESU. With input from co-managers, NMFS identified a list of streams containing primarily native runs of chinook salmon with minimal influence from hatchery fish to get a better understanding of the present distribution and population sizes of potentially self-sustaining chinook salmon runs in the lower Columbia River ESU (ODFW, 1998). Populations of ''bright'' fall-run chinook salmon identified included those on the North Fork and East Fork of the Lewis River and the Sandy River; ''tule'' fall-run chinook salmon populations identified as naturally reproducing were those on the Clackamas, East Fork of the Lewis and Coweeman Rivers. Estimated average escapements over the past 5–10 years for these populations ranged from 300 (tule fall-run chinook on the East

Fork of the Lewis River) to over 11,000 (fall-run chinook on the North Fork Lewis River). These are the only fall-run chinook salmon populations in the ESU with relatively high abundance and low hatchery influence. The populations identified by NMFS do not include some populations that ODFW suggested should be considered for risk evaluations. Some of the populations of fall-run chinook salmon suggested by ODFW as naturally self-sustaining are smaller, have extensive hatchery components, or were determined by NMFS to be in a different ESU (see ''Status of Chinook Salmon ESUs''). NMFS discussed the likely possibility that smaller streams draining into the Columbia River below the Cowlitz River historically had small populations of tule fall-run chinook salmon. It was not clear to NMFS whether these small populations of tule fall-run chinook historically were self-sustaining; the widespread presence of tule hatchery fish in this area makes their present status difficult to evaluate.

The few remaining populations of spring chinook salmon in the ESU were not considered to be naturally self-sustaining because of either small size, extensive hatchery influence, or both. NMFS felt that the dramatic declines and losses of spring run chinook salmon populations in the Lower Columbia River ESU represent a serious reduction in life-history diversity in the region.

Long-term trends in chinook salmon abundance are mixed in this ESU, but NMFS was concerned that short-term trends are predominantly downward, some strongly so. It is difficult to predict whether the high variability in abundance estimates for chinook salmon in many streams in this ESU reflect natural fluctuations in the numbers of wild fish or periodic influences from hatchery fish. Exceptions are the Coweeman and Green River (Cowlitz River tributary) tule fall-runs, where short-term trends in abundance are positive.

The presence of hatchery chinook salmon in this ESU poses an important threat to the persistence of the ESU and also obscures trends in abundance of native fish. At the time of the status review, approximately 68 percent of the naturally spawning chinook salmon in the lower Columbia River ESU were estimated to be first-generation hatchery fish; no new information was available to suggest that this percentage has appreciably changed. NMFS discussed the difficulty in ascribing ''native, naturally self-sustaining'' status to tule fall-run chinook salmon runs because of the extensive within-ESU transfers of these fish. Recent changes in hatchery release practices adopted by ODFW designed to reduce straying of introduced Rogue River fall-run chinook salmon into lower Columbia River streams are encouraging changes. Nevertheless, NMFS noted that straying of these out-of-ESU fish still could occur into lower Columbia River streams.

In summary, habitat degradation and loss due to extensive hydropower development projects, urbanization, logging and agriculture continue to threaten the chinook salmon spawning and rearing habitat in the lower Columbia River. Recent harvest levels in the mainstem Columbia River and tributary fisheries are reduced over historic practices. Nevertheless, NMFS concludes that documented extinctions in fall- and spring-run chinook salmon populations, the near complete demise of the spring-run life history form, extensive mixing of fall-run tule chinook salmon populations within the ESU and the widespread occurrence of hatchery fish have combined to pose significant threats to the persistence of chinook salmon in the lower Columbia River ESU.

Listing Determination

Based on available information, NMFS concludes that chinook salmon in the Lower Columbia River ESU are not presently in danger of extinction, but they are likely to become endangered in the foreseeable future. Therefore, NMFS determines that Lower Columbia River chinook salmon warrant listing as a threatened species under the ESA. In this ESU, all naturally spawned populations of chinook salmon residing below impassable natural barriers (e.g., long-standing, natural waterfalls) are listed. This ESU does not include spring-run chinook salmon derived from the Round Butte Hatchery (Deschutes River, Oregon) (and their progeny) and spawning in the Hood River, spring-run chinook salmon derived from the Carson NFH (and their progeny) and spawning in the Wind River, fall-run fish (and their progeny) that originated from the Upper Columbia River summer/fall-run ESU and spawning the mainstem Columbia River below Bonneville Dam and in other Bonneville Pool tributaries, and naturally spawning fish originating from the Rogue River fall chinook program (and their progeny).

Status of Hatchery Populations

The BRT concluded that one of the hatchery chinook salmon stocks identified as part of this ESU (Cowlitz River Hatchery spring-run; see Summary of Chinook Salmon ESU Determinations) was essential for the recovery of the ESU (NMFS, 1999b; Table 2). Like the natural population in the Cowlitz River, the hatchery stock has declined steadily for the past two decades and appeared to stabilize at depressed levels during the past five years. However, the hatchery run is still an order of magnitude greater than the natural run, averaging about 2,000 hatchery returnees during the past 5 years, (which is approximately double the number needed to maintain the hatchery run). NMFS has reviewed the state's hatchery and harvest efforts pertaining to the Cowlitz River Hatchery stock and determined that they are sufficiently protective of this stock and likely to continue producing surplus non-listed fish that could be made available for harvest in most years (NMFS, 1999c). In addition, supplementation and re-introduction efforts using this hatchery stock are already underway and will likely contribute to the recovery of the ESU. Therefore, NMFS has determined that listing the Cowlitz River Hatchery stock is not warranted because their future existence and value for recovery are not at risk (NMFS, 1999c). If new information indicates that the hatchery stock is at risk of extinction, NMFS will revise its listing status accordingly. NMFS has reviewed the state's hatchery and harvest efforts pertaining to the Cowlitz River hatchery stock and determined that they are sufficiently protective of this stock and likely to continue producing surplus non-listed fish that could be made available for harvest in most years (NMFS, 1999c). In addition, supplementation and re-introduction efforts using this hatchery stock are already underway and will likely contribute to the recovery of the ESU.

(3) Upper Willamette River Chinook Salmon

NMFS received updated abundance information for chinook salmon in the Upper Willamette River ESU through 1997–98, including total abundance estimates of spring chinook salmon at Willamette Falls and counts at Leaburg Dam on the McKenzie River (NMFS, 1998a). Spring chinook salmon runs at both sites continue to exhibit declines in estimated abundance. For fishery monitoring purposes, the Clackamas River spring-run chinook salmon are included with the Willamette River (ODFW, 1994). Consistent with ODFW's approach, NMFS concluded that the spring-run chinook salmon in the Clackamas River should be considered part of the Upper Willamette River ESU (see ''Status of Chinook Salmon ESUs''). Historical estimates of chinook salmon

abundance in the Clackamas River are available for the late-1800s. At least 100 tons of chinook salmon were harvested from the Clackamas River in both 1893 and 1894. Given an average of 22.8 pounds (10.3 kgs) per fish, an estimated 12,000 and 8,000 chinook salmon were caught in those 2 years (ODFW, 1992). ODFW (1992) reported that most of the chinook salmon caught in the Clackamas River fisheries were spring-run. Updated dam counts for spring-run chinook salmon on the Clackamas River were obtained by NMFS through 1997, and the resulting 5-year geometric mean estimate of naturally spawning spring-run chinook salmon is just over 6,000 fish (Streamnet, 1998). Because of the heavy influence of spring-chinook salmon of hatchery origin in the Clackamas River, NMFS did not weigh Clackamas River abundance estimates heavily in their risk determinations for the Upper Willamette River ESU.

The spring-run has been counted at Willamette Falls since 1946 (ODFW and WDFW, 1995), but counts were not differentiated into adults and jacks until 1952. In the first 5 years (1946–50), the geometric mean of the counts for adults and jacks combined was 31,000 fish. The most recent 5-year (1993–97) geometric mean escapement above Willamette Falls was 24,000 adults (NMFS, 1998a). Willamette River spring-run chinook salmon are targeted by commercial and recreational fisheries in the lower Willamette and Columbia Rivers. During the 5-year period from 1992–1996, the geometric mean of the run-size to the mouth of the Columbia River was 48,000 fish (PFMC, 1997b). Long-term trends in escapement of spring-run chinook salmon to the Upper Willamette River ESU are mixed, ranging from slightly upward to moderately downward (NMFS, 1998a). Short-term trends in abundance are all strongly downward.

Estimates of the naturally produced run have been made only for the McKenzie River from 1994 to 1998 (Nicholas, 1995; ODFW, 1998). Nicholas (1995) estimated the escapement of naturally produced spring-run chinook salmon in the McKenzie River to be approximately 1,000 spawners. Updated information using an estimation from counts at Leaburg Dam suggest that the most recent 5-year geometric mean escapement of naturally-spawning spring-run chinook salmon in the McKenzie River was 1,500 fish (ODFW, 1998; NMFS, 1998a). Until the 1940s, as many as 11 million chinook salmon fry and fingerlings were released into the McKenzie River and tributaries annually (Wallis, 1961; Howell *et al.*, 1988). Although returns from these releases were poor, they may have influenced the shift in the spawn timing in the McKenzie River Basin from historical times. In the early 1900s, peak spawning occurred during early September, and now peak spawning occurs during late September/early October (Wallis, 1961; Howell *et al.*, 1988). It is possible that the shift in spawn timing of chinook salmon in the McKenzie River Basin is due in part to influences from hatchery-derived fish. Alternatively, alterations in the thermal regime due to dam projects may have caused the shift in spawn timing.

Habitat blockage and degradation are significant problems in this ESU. Available habitat has been reduced by construction of dams in the Santiam, McKenzie, and Middle Fork Willamette River Basins, and these dams have probably adversely affected remaining production via thermal effects. Agricultural development and urbanization are the main activities that have adversely affected habitat throughout the basin (Bottom *et al.*, 1985; Kostow, 1995).

Historically, only spring-run fish were able to ascend Willamette Falls to access the upper Willamette River (Fulton, 1968). Following improvements in the fish ladder at Willamette Falls, some 200 million fall-run chinook salmon have been introduced into this ESU since the 1950s. In contrast, the upper Willamette River has received relatively few introductions of non-native spring-run fish from outside this ESU (Myers *et al.*, 1998). Artificial propagation efforts have been undertaken by a limited number of large facilities (McKenzie, Marion Forks, South Santiam, and Willamette (Dexter) Fish Hatcheries). These hatcheries have exchanged millions of eggs from various populations in the upper Willamette River Basin. The result of these transfers has been the loss of local genetic diversity and the formation of a single breeding unit in the Willamette River Basin (Kostow, 1995). Considerable numbers of hatchery spring-run strays have been recovered from natural spawning grounds, and an estimated two-thirds of natural spawners are of hatchery origin (Nicholas, 1995). There is also evidence that introduced fall-run chinook salmon have successfully spawned in the upper Willamette River (Howell *et al.*, 1985). Whether hybridization has occurred between native spring-run and introduced fall-run fish is not known. The majority of the Willamette River fish are hatchery produced.

Total harvest rates on stocks in this ESU are moderately high, with the average total harvest mortality rate estimated to be 72 percent in 1982–89, and a corresponding ocean exploitation rate of 24 percent (PSC, 1994). This estimate does not fully account for escapement, and ODFW is in the process of revising harvest rate estimates for this stock; revised estimates may average 57 percent total harvest rate, with 16 percent ocean and 48 percent freshwater components (Kostow, 1995). The in-river recreational harvest rate (Willamette River sport catch/estimated run size) for the period from 1991 through 1995 was 33 percent (PFMC, 1996). ODFW (1998) provided information indicating that total (marine and freshwater) harvest rates on upper Willamette River spring-run stocks have been reduced considerably for the 1991–93 broodyears to an average 21 percent.

NMFS' primary concerns regarding the status of the Upper Willamette River ESU focused on risks associated with low abundance and reduced distribution. NMFS was concerned about the few remaining populations of spring chinook salmon in the Upper Willamette River ESU, and the high proportion of hatchery fish in the remaining runs. The recent average total abundance of spring chinook salmon in this ESU has been 24,000 fish, of which only 4,000 are believed to be spawning naturally. In addition, it is estimated that two-thirds of the naturally spawning spring chinook salmon are first generation hatchery fish. In other words, the high proportion of hatchery fish in the total return and on spawning grounds indicate that populations of chinook salmon in this ESU are not self sustaining. ODFW was able to identify only one remaining naturally reproducing population in this ESU, spring chinook salmon in the McKenzie River. Severe declines in short-term abundance have occurred throughout the ESU, and the McKenzie River population declined precipitously until 1994. Since 1994, adult returns of naturally spawning spring-run chinook have increased slowly, although it is believed that a large portion of these chinook salmon are first generation hatchery fish.

As stated in the status review (Myers *et al.*, 1998), the potential for interactions between native spring-run and introduced fall-run chinook salmon has increased relative to historical times due to fall-run chinook salmon hatchery programs and the laddering of Willamette Falls. There is no direct evidence of interbreeding between the two forms, but they do exhibit overlap in spawning times and locations. No new evidence was presented indicating significant changes in the conditions that affect the potential for negative

interactions between native and hatchery spring-run chinook salmon in this ESU.

The declines in spring chinook salmon in the Upper Willamette River ESU can be attributed in large part to the extensive habitat blockages caused by dam construction. The overall reduction in available spawning and rearing habitat, combined with altered water flow and temperature regimes, have probably had a major deleterious effect on spring chinook salmon abundance in this ESU. Furthermore, historically high harvest levels have occurred on chinook salmon in this ESU in ocean and lower Columbia River fisheries. Recent efforts to reduce harvest of naturally produced spring chinook salmon in Upper Willamette River tributaries, and the increase in selective fisheries should help managers targeting specific populations of wild or hatchery chinook salmon.

Listing Determination

Based on available information, NMFS concludes that chinook salmon in the Upper Willamette River ESU are not presently in danger of extinction, but they are likely to become endangered in the foreseeable future. Therefore, NMFS determines that Upper Willamette River chinook salmon warrant listing as a threatened species under the ESA. In this ESU, all naturally spawned populations of spring-run chinook salmon residing below impassable natural barriers (e.g., long-standing, natural waterfalls) are listed. This ESU does not include fall-run chinook salmon.

Status of Hatchery Populations

NMFS concludes that none of the hatchery chinook salmon stocks identified as part of this ESU (''Summary of Chinook Salmon ESU Determinations'') should be listed since none are currently essential for the recovery of the ESU (NMFS, 1999b; Table 3).

(4) Upper Columbia River Spring-run Chinook Salmon

There are no estimates of historical abundance specific to this ESU. WDFW monitors nine spring-run chinook salmon stocks geographically located within this ESU. Escapements to most tributaries are monitored by redd counts, which are expanded to total live fish based on counts at mainstem dams. Updated abundance information for spring-run chinook salmon in the Upper Columbia River ESU through 1997–98 was obtained for redd counts on all streams monitored in this ESU (NMFS, 1998a). Escapements continue to be critically low in all rivers, and the redd counts are still declining severely. Individual populations within the ESU are all quite small, with none averaging over 150 adults annually in recent years (NMFS, 1998a). Long-term trends in estimated abundance are mostly downward, with annual rates of change ranging from −6 percent to +1 percent over the full data set. All ten short-term trends were downward, with five populations exhibiting rates of decline exceeding 20 percent per year (NMFS, 1998a). Harvest rates have been declining recently, and currently they are less than 10 percent (ODFW and WDFW, 1995).

Artificial propagation efforts have had a significant impact on spring-run populations in this ESU. Artificial propagation recently has focused on supplementing naturally spawning populations in this ESU (Bugert, 1996), although it should be emphasized that these naturally spawning populations were founded by the same GCFMP homogenized stock. Furthermore, the potential for hatchery-derived non-native stocks to adversely affect naturally spawning populations, especially given the recent low numbers of fish returning to rivers in this ESU. The hatchery contribution to escapement may be moderated by the homing fidelity of spring-run fish that could reduce the potential for hybridization (Chapman *et al.*, 1995). For example, the hatchery contribution to naturally spawning escapement was recently estimated as 39 percent in the mainstem Methow River (where the hatcheries are located), but averaged only 10 percent in the tributaries—Chewuch, Lost, and Twisp Rivers—that are upstream of the hatcheries (Spotts, 1995). In contrast, WDFW (1997) reported that in 1996 the Chewuch and Twisp runs were 62 percent and 72 percent hatchery fish, respectively. Utter *et al.* (1995) found that spring-run hatchery stocks from Leavenworth and Winthrop hatcheries were genetically indistinguishable from the Carson hatchery stock, but distinct from naturally spawning populations in the White and Chiwawa Rivers and Nason Creek. In 2 recent years (in 1996 and 1998), 100 percent of the production in the Methow River Basin has come from hatchery-reared fish. The returns to Methow River tributaries were so low in those years that all adults returning to Wells Dam were intercepted for emergency artificial propagation at the Methow Fish Hatchery and the Winthrop NFH (L. Brown, WDFW, 3860 Chelan Highway, Wenatchee, WA 98801. Pers. comm., November, 1998). In addition, captive broodstock programs are underway on the Twisp River and are just beginning on the White River and Nason Creek (NMFS *et al.*, 1998). Production of the non-native Carson hatchery stock will be discontinued at the Winthrop NFH (NMFS *et al.*, 1998).

Howell *et al.* (1985), Chapman *et al.* (1991), Mullan *et al.* (1992), and Chapman *et al.* (1995) have suggested that the prevalence of bacterial kidney disease (BKD) in upper Columbia and Snake River hatcheries is directly responsible for the low survival of hatchery stocks. These authors also suggest that the high incidence of BKD in hatcheries impacts wild populations, and reduces the survival of hatchery fish to such an extent that naturally spawning adults are ''mined'' to perpetuate hatchery stocks (Chapman *et al.*, 1991). There may also be direct horizontal transmission of BKD between hatchery and wild juveniles during downstream migration (specifically, in smolt collection and transportation facilities) or vertical transmission from hatchery-reared females on the spawning grounds.

Another recent risk evaluation for chinook salmon in this ESU was conducted by an interagency working group as part of the Mid-Columbia River HCP development (NMFS *et al.*, 1998). To determine the need for hatchery supplementation programs in the HCP region (an area including the Wenatchee, Entiat, and Methow River Basins), a panel of experts was asked to estimate (using best professional judgement) the probability that the spring-run chinook salmon populations in those 3 river basins would have a certain status (extinct, nearly extinct, <100 fish/year, 100–500 fish/year, and >500 fish/year) after 10–50 years under current conditions and without hatchery supplementation. In all river basins within this Upper Columbia River Spring-Run ESU geographic area, the experts estimated that there was a greater than 50 percent chance that the chinook salmon would be nearly extinct or extinct within 50 years, assuming current conditions continue into the future. Furthermore, the experts predicted that there was only a 4 to 17 percent chance that after 50 years there would be more than 100 spring-run chinook salmon in any river (NMFS *et al.*, 1998).

NMFS' primary concerns centered on very low abundance and distribution and strongly negative trends and stock productivity for this ESU. The average recent escapement to the ESU has been less than 5,000 hatchery and wild chinook salmon combined; all

individual populations consist of less than 100 fish. At these population sizes, negative effects of demographic and genetic stochastic processes are very likely to occur. Furthermore, both long- and short-term trends in abundance are declining, many strongly so. The abundance of the spring chinook salmon returning to the Methow River Basin has been so low that all fish returning in 1996 and 1998 were intercepted at Wells Dam and were incorporated into artificial propagation programs at Methow fish hatchery. In addition, the captive broodstock programs underway on the Twisp and White Rivers and Nason Creek indicate the severity of the population declines.

Plans to discontinue production of the non-native Carson hatchery stock at the Winthrop NFH are encouraging. Nevertheless, the extensive introductions of spring-run chinook salmon from outside the ESU and within-ESU egg transfers that occurred in the past have left their mark on the genetic legacy of the fish remaining in the ESU. Furthermore, as mentioned above, because of the extremely low population sizes in some streams in some years, 100 percent of the offspring for an entire basin were produced in a hatchery from a mixture of populations. That such extreme measures have been considered necessary speaks to the seriousness of the risks faced by the natural populations.

Habitat degradation, blockages and hydroelectric power system passage mortality all have contributed to the significant declines in spring chinook salmon production in this ESU. In addition to at least six known extinctions, all remaining populations are small and declining in number. Recently, a panel of fisheries experts convened to evaluate a management plan for a HCP in this region and concluded in their risk evaluations that the probability of extinction for spring-run chinook salmon was high. NMFS discussed the possible significance of a noted increase in non-migratory jacks in some areas, and was not able to conclude whether their presence represented a permanent change in age structure or merely a facultative shift in life history strategy due to changes in the selective environment. Finally, due to near elimination of in-river harvest during the last two decades and the absence of a significant marine harvest on these populations, NMFS is concerned that the remaining avenues for recovery would take years to implement and that the ESU may go extinct before any improvements could take effect.

Listing Determination

Based on available information, NMFS concludes that the Upper Columbia River spring-run chinook salmon ESU is in danger of extinction throughout all or a significant portion of its range. Therefore, NMFS determines that Upper Columbia River spring-run chinook salmon warrant listing as an endangered species under the ESA. In this ESU, all naturally spawned populations of spring-run chinook salmon residing below impassable natural barriers (e.g., long-standing, natural waterfalls) are listed. This ESU does not include naturally spawning spring-run chinook salmon derived from the Carson NFH spring-run chinook salmon stock, or other hatchery stocks derived from the Carson spring-run stock and their progeny.

Status of Hatchery Populations

NMFS concludes that 6 of the hatchery chinook salmon stocks identified as part of this ESU (see ''Summary of Chinook Salmon ESU Determinations'') should be listed (as well as their progeny) since they are currently essential for the recovery of the ESU (NMFS, 1999b; Table 4). The listed hatchery stocks are: Chiwawa River (spring run); Methow River (spring run); Twisp River (spring run); Chewuch River (spring run); White River (spring run); and Nason Creek (spring run).

Determinations

After reviewing the best available information, including general public and peer review comments, and biological data on the species' status and an assessment of protective efforts, as described in the previous sections of this document, NMFS has concluded that four chinook salmon ESUs warrant protection under the ESA. With respect to the four chinook salmon ESUs that are the subject of this rule, NMFS has determined that three ESUs are at risk of becoming endangered in the foreseeable future throughout all or a portion of their range. The threatened chinook salmon ESUs are Puget Sound chinook salmon in Washington, Lower Columbia River chinook salmon in Washington and Oregon, and Upper Willamette spring-run chinook salmon in Oregon. NMFS also has determined that Upper Columbia River spring-run chinook salmon in Washington are in danger of extinction throughout all or a significant portion of their range.

In all four ESUs, only naturally spawned populations of chinook salmon residing below impassable natural barriers (e.g., long-standing, natural waterfalls) are listed. Naturally spawning fish (and their progeny) from the following populations are not considered part of the specified ESUs and are not intended to receive ESA protection: (1) Naturally spawning descendants from the spring-run chinook salmon program at the Quilcene NFH (Quilcene and Sol Duc stocks) and their progeny are not considered part of the Puget Sound ESU; (2) spring-run chinook salmon derived from the Round Butte Hatchery (Deschutes, Oregon) (and their progeny) and spawning in the Hood River, spring-run chinook salmon derived from the Carson NFH (and their progeny) and spawning in the Wind River, fall-run fish (and their progeny) that originated from the Upper Columbia River summer/fall-run ESU and spawn in the mainstem Columbia River below Bonneville Dam and in other Bonneville Pool tributaries, and naturally spawning fish originating from the Rogue River fall chinook program (and their progeny) are not considered part of the Lower Columbia River ESU; (3) fall-run chinook salmon are not considered part of the Upper Willamette River ESU; and (4) naturally spawning spring-run chinook salmon derived from the Carson NFH (and their progeny) are not considered part of the Upper Columbia River spring-run ESU.

NMFS' intent in listing only ''naturally spawned'' populations is to protect chinook salmon stocks that are indigenous to (i.e., part of) the ESU. In this listing determination NMFS has identified various non-indigenous populations that co-occur with fish in the listed ESUs. NMFS recognizes the difficulty of differentiating between indigenous and non-indigenous fish, especially when the latter are not readily distinguishable with a mark (e.g., fin clip). Also, matings in the wild of either type would generally result in progeny that would be treated as listed fish (i.e., they would have been naturally spawned in the geographic range of the listed ESU and have no distinguishing mark). Therefore, to reduce confusion regarding which chinook salmon are considered listed within an ESU, NMFS will treat all naturally spawned fish as listed for purposes of the ESA. Efforts to determine the conservation status of an ESU would focus on the contribution of indigenous fish to the listed ESU. It should be noted that NMFS will take actions necessary to minimize or prevent non-indigenous chinook salmon from spawning in the wild unless the fish are specifically part of a recovery effort.

NMFS has evaluated the relationship between hatchery and natural populations of chinook salmon in these ESUs (described previously in ''Summary of Chinook Salmon ESU Determinations'' and ''Status of Chinook Salmon ESUs''). In the Puget Sound ESU, chinook salmon (and their progeny) from the following hatchery stocks are considered part of the ESU and listed: Kendall Creek (spring run); North Fork Stillaguamish River (summer run); White River (spring run); Dungeness River (spring run); and Elwha River (fall run). In the Lower Columbia and Upper Willamette River ESUs, none of the chinook salmon hatchery stocks considered part of the ESUs are being listed. Finally, in the Upper Columbia River spring-run ESU, chinook salmon (and their progeny) from the following hatchery stocks are considered part of the ESU and listed: Chiwawa River (spring run); Methow River (spring run); Twisp River (spring run); Chewuch River (spring run); White River (spring run); and Nason Creek (spring run). Other hatchery stocks identified as part of these four ESUs are not considered to be essential for their recovery; hence, they are not listed at this time.

The determination that a hatchery stock is not ''essential'' for recovery does not preclude it from playing a role in recovery. Any hatchery population that is part of the ESU is available for use in recovery if conditions warrant. In this context, an ''essential'' hatchery population is one that is vital to incorporate into recovery efforts (for example, if the associated natural population(s) were extinct or at high risk of extinction). Under such circumstances, NMFS would consider taking the administrative action of listing existing hatchery fish.

NMFS' ''Interim Policy on Artificial Propagation of Pacific Salmon Under the Endangered Species Act'' (58 FR 17573, April 5, 1993) provides guidance on the treatment of hatchery stocks in the event of a listing. Under this policy, ''progeny of fish from the listed species that are propagated artificially are considered part of the listed species and are protected under the ESA.'' In the case of hatchery chinook populations considered to be part of the Puget Sound ESU, Lower Columbia River ESU, Upper Willamette River spring-run ESU, or Upper Columbia River spring-run ESU, NMFS protective regulations may except take of naturally spawned listed fish for use as broodstock as part of an overall conservation program. According to the interim policy, the progeny of these hatchery-wild or wild-wild crosses would also be listed. Given the requirement for an acceptable conservation plan as a prerequisite for collecting broodstock, NMFS determines that it is not necessary to consider the progeny of intentional hatchery-wild or wild-wild crosses as listed (except in cases where NMFS has listed the hatchery population as well).

In addition, NMFS believes it is desirable to incorporate naturally spawned fish into these unlisted hatchery populations to ensure that their genetic and life history characteristics do not diverge significantly from the natural populations. NMFS therefore concludes that it is not inconsistent with NMFS'' interim policy, nor with the policy and purposes of the ESA, to consider these progeny as part of the ESU but not listed.

NMFS is not now issuing protective regulations under section 4(d) of the ESA for this species. NMFS will propose such protective measures it considers necessary for the conservation of chinook salmon ESUs listed as threatened in a forthcoming **Federal Register** document. Even though NMFS does not now issue protective regulations for this ESU, Federal agencies possess a duty under section 7 of the ESA to consult with NMFS if any activity they authorize, fund, or carry out may affect listed chinook salmon ESUs. The effective date for this requirement is May 24, 1999.

Prohibitions and Protective Measures

Section 9 of the ESA prohibits certain activities that directly or indirectly affect endangered species. These prohibitions apply to all individuals, organizations, and agencies subject to U.S. jurisdiction. Section 9 prohibitions apply automatically to endangered species, and will become effective for the Upper Columbia River spring-run chinook ESU 60 days after publication of this final rule.

Section 4(d) of the ESA directs the Secretary to implement regulations ''to provide for the conservation of [threatened] species,'' that may include extending any or all of the prohibitions of section 9 to threatened species. Section 9(a)(1)(g) also prohibits violations of protective regulations for threatened species implemented under section 4(d). NMFS will soon issue protective regulations pursuant to section 4(d) for the Puget Sound, Lower Columbia River, and Upper Willamette River chinook salmon ESUs.

In the case of threatened species, NMFS also has flexibility under section 4(d) of the ESA to tailor the protective regulations based on the contents of adequate available conservation measures. Even though existing conservation efforts and plans are not sufficient to preclude the need for listings at this time, they are nevertheless valuable for improving watershed health and restoring salmon populations. In those cases where well-developed and reliable conservation plans exist, NMFS may choose to incorporate them into the recovery planning process starting with protective regulations. NMFS has already adopted 4(d) protective regulations that except a limited range of activities from section 9 take prohibitions. For example, the interim 4(d) rule for Southern Oregon/Northern California Coasts coho salmon (62 FR 38479, July 18, 1997) excepts habitat restoration activities conducted in accordance with approved plans and fisheries conducted in accordance with an approved state management plan. In the future, 4(d) rules may contain limited take prohibitions applicable to such activities as forestry, agriculture, and road construction when such activities are conducted in accordance with approved conservation plans.

These are all examples where NMFS may apply modified section 9 prohibitions in light of the protections provided in a conservation plan that is adequately protective. There may be other circumstances as well in which NMFS would use the flexibility of section 4(d). For example, in some cases there may be a healthy population within an overall ESU that is listed. In such a case, it may not be necessary to apply the full range of prohibitions available in section 9. NMFS intends to use the flexibility of the ESA to respond appropriately to the biological condition of each ESU and to the strength of efforts to protect them.

Section 7(a)(4) of the ESA requires that Federal agencies consult with NMFS on any actions likely to jeopardize the continued existence of a species proposed for listing and on actions likely to result in the destruction or adverse modification of proposed critical habitat. For listed species, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or conduct are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with NMFS.

Examples of Federal actions likely to affect chinook salmon in the listed ESUs include authorized land management activities of the USFS and BLM, as well as operation of hydroelectric and storage

projects of the Bureau of Reclamation and COE. Such activities include timber sales and harvest, hydroelectric power generation, and flood control. Federal actions, including the COE section 404 permitting activities under the Clean Water Act, COE permitting activities under the River and Harbors Act, National Pollution Discharge Elimination System permits issued by the Environmental Protection Agency, highway projects authorized by the Federal Highway Administration, Federal Energy Regulatory Commission licenses for non-Federal development and operation of hydropower, and Federal salmon hatcheries, may also require consultation. These actions will likely be subject to ESA section 7 consultation requirements that may result in conditions designed to achieve the intended purpose of the project and avoid or reduce impacts to chinook salmon and its habitat within the range of the listed ESUs.

There are likely to be Federal actions ongoing in the range of the listed ESUs at the time these listings become effective. Therefore, NMFS will review all ongoing actions that may affect the listed species with Federal agencies and will complete formal or informal consultations, where requested or necessary, for such actions pursuant to ESA section 7(a)(2).

Sections 10(a)(1)(A) and 10(a)(1)(B) of the ESA provide NMFS with authority to grant exceptions to the ESA's ''taking'' prohibitions. Section 10(a)(1)(A) scientific research and enhancement permits may be issued to entities (Federal and non-Federal) conducting research that involves a directed take of listed species.

NMFS has issued section 10(a)(1)(A) research or enhancement permits for other listed species (e.g., Snake River chinook salmon, Sacramento River winter-run chinook salmon) for a number of activities, including trapping and tagging to determine population distribution and abundance, and collection of adult fish for artificial propagation programs. NMFS is aware of many sampling efforts for chinook salmon within these listed chinook salmon ESUs, including efforts by Federal and state fisheries agencies, and private landowners. These and other research efforts could provide critical information regarding chinook salmon distribution and population abundance.

ESA section 10(a)(1)(B) incidental take permits may be issued to nonfederal entities performing activities that may incidentally take listed species. The types of activities potentially requiring a section 10(a)(1)(B) incidental take permit include the release of artificially propagated fish by state or privately operated and funded hatcheries, state or university research on other species, not receiving Federal authorization or funding, the implementation of state fishing regulations, and timber harvest activities on nonfederal lands.

Take Guidance

On July 1, 1994, (59 FR 34272) NMFS and FWS published a policy committing the Services to identify, to the maximum extent practicable at the time a species is listed, those activities that would or would not constitute a violation of section 9 of the ESA. The intent of this policy is to increase public awareness of the effect of a listing on proposed and on-going activities within the species' range. NMFS believes that, based on the best available information, the following actions will not result in a violation of section 9: (1) Possession of chinook salmon from the listed ESUs acquired lawfully by permit issued by NMFS pursuant to section 10 of the ESA, or by the terms of an incidental take statement pursuant to section 7 of the ESA; and (2) federally funded or approved projects that involve activities such as silviculture, grazing, mining, road construction, dam construction and operation, discharge of fill material, stream channelization or diversion for which a section 7 consultation has been completed, and when such an activity is conducted in accordance with any terms and conditions provided by NMFS in an incidental take statement accompanied by a biological opinion pursuant to section 7 of the ESA. As described previously in this notice, NMFS may adopt 4(d) protective regulations that except other activities from section 9 take prohibitions for threatened species.

Activities that NMFS believes could potentially harm, injure or kill chinook salmon in the listed ESUs and result in a violation of section 9 of the ESA include, but are not limited to: (1) land-use activities that adversely affect chinook salmon habitat in this ESU (e.g., logging, grazing, farming, road construction in riparian areas, and areas susceptible to mass wasting and surface erosion); (2) destruction or alteration of chinook salmon habitat in the listed ESUs, such as removal of large woody debris and ''sinker logs'' or riparian shade canopy, dredging, discharge of fill material, draining, ditching, diverting, blocking, or altering stream channels or surface or ground water flow; (3) discharges or dumping of toxic chemicals or other pollutants (e.g., sewage, oil, gasoline) into waters or riparian areas supporting listed chinook salmon; (4) violation of discharge permits; (5) pesticide and herbicide applications; (6) interstate and foreign commerce of chinook salmon from the listed ESUs and import/export of chinook salmon from listed ESUs without an ESA permit, unless the fish were harvested pursuant to legal exception; (7) collecting or handling of chinook salmon from listed ESUs (permits to conduct these activities are available for purposes of scientific research or to enhance the propagation or survival of the species); and (8) introduction of non-native species likely to prey on chinook salmon in these ESUs or displace them from their habitat. This list is not exhaustive. It is intended to provide some examples of the types of activities that might or might not be considered by NMFS as constituting a take of listed chinook salmon under the ESA and its regulations. Questions regarding whether specific activities will constitute a violation of this rule, and general inquiries regarding prohibitions and permits, should be directed to NMFS (see **ADDRESSES**).

Effective Date of Final Listing

Given the cultural, scientific, and recreational importance of chinook salmon, and the broad geographic range of these chinook salmon ESUs, NMFS recognizes that numerous parties may be affected by this listing. Therefore, to permit an orderly implementation of the consultation requirements and take prohibitions associated with this action, this final listing will take effect on May 24, 1999.

Conservation Measures

Conservation benefits are provided to species listed as endangered or threatened under the ESA through increased recognition, recovery actions, Federal agency consultation requirements, and prohibitions on taking. Increased recognition through listing promotes public awareness and conservation actions by Federal, state, and local agencies, private organizations, and individuals.

Several conservation efforts are underway that may reverse the decline of west coast chinook salmon and other salmonids. NMFS is encouraged by these significant efforts, which could provide all stakeholders with an approach to achieving the purposes of the ESA—protecting and restoring native fish populations and the ecosystems upon which they depend—that is less regulatory. NMFS will continue to encourage and support these initiatives as important components of recovery planning for chinook salmon and other salmonids.

To succeed, protective regulations and recovery programs for chinook salmon will need to focus on conserving aquatic ecosystem health. NMFS intends that Federal lands and Federal activities play a primary role in preserving listed populations and the ecosystems upon which they depend. However, throughout the range of the listed ESUs, chinook salmon habitat occurs and can be affected by activities on state, tribal or private land.

Conservation measures that could be implemented to help conserve the species are listed here (the list is generalized and does not constitute NMFS' interpretation of a recovery plan under section 4(f) of the ESA). Progress on some of these is being made to differing degrees in specific areas.

1. Measures could be taken to promote practices that are more protective of (or restore) chinook salmon habitat across a variety of land and water management activities. Activities affecting this habitat include timber harvest; agriculture; livestock grazing and operations; pesticide and herbicide applications; construction and urban development; road building and maintenance; sand and gravel mining; stream channelization; dredging and dredged spoil disposal; dock and marina construction; diking and bank stabilization; dam construction/operation; irrigation withdrawal, storage, and management; mineral mining; wastewater/pollutant discharge; wetland and floodplain alteration; habitat restoration projects; and woody debris/structure removal from rivers and estuaries. Each of these activities could be modified to ensure that watersheds and specific river reaches are adequately protected in the short-and long-terms.

2. Fish passage could be restored at barriers to migration through the installation or modification of fish ladders, upgrade of culverts, or removal of barriers.

3. Harvest regulations could be modified to protect listed chinook salmon populations affected by both directed harvest and incidental take in other fisheries.

4. Artificial propagation programs could be modified to minimize negative impacts (e.g., genetic introgression, competition, disease, etc.) upon native populations of chinook salmon.

5. Predator control/relocation programs could be implemented in areas where predators pose a significant threat to chinook salmon.

6. Measures could be taken to improve monitoring of chinook salmon populations and their habitat.

7. Federal agencies such as the USFS, BLM, Federal Energy Regulatory Commission, COE, U.S. Department of Transportation, and U.S. Bureau of Reclamation could review their management programs and use their discretionary authorities to formulate conservation plans pursuant to section 7(a)(1) of the ESA.

NMFS encourages non-Federal landowners to assess the impacts of their actions on threatened or endangered salmonids. In particular, NMFS encourages state and local governments to use their existing authorities and programs, and encourages the formation of watershed partnerships to promote conservation in accordance with ecosystem principles. These partnerships will be successful only if state, tribal, and local governments, landowner representatives, and Federal and non-Federal biologists all participate and share the goal of restoring salmon to the watersheds.

Critical Habitat

Section 4(a)(3)(A) of the ESA requires that, to the extent prudent and determinable, critical habitat be designated concurrently with the listing of a species. Section 4(b)(6)(C)(ii) provides that, where critical habitat is not determinable at the time of final listing, NMFS may extend the period for designating critical habitat by not more than one additional year.

In the proposed rule (63 FR 11482, March 9, 1998), NMFS described the areas that may constitute critical habitat for the proposed chinook salmon ESUs. Since then, NMFS has received numerous comments from the public concerning the process and definition of critical habitat for chinook salmon and other salmonids. Also, due to statutory time limitations, NMFS has not yet consulted with affected Indian tribes regarding the designation of critical habitat in areas that may affect tribal trust resources, tribally owned fee lands, or the exercise of tribal rights.

Given these remaining unresolved issues, NMFS determines at this time that a final critical habitat designation is not determinable for these ESUs since additional time is required to complete the needed biological assessments and evaluate special management considerations affecting critical habitat. NMFS, therefore, extends the deadline for designating critical habitat for 1 year until such assessments can be made and after appropriate consultations are completed.

Classification

The 1982 amendments to the ESA, in section 4(b)(1)(A), restrict the information that may be considered when assessing species for listing. Based on this limitation of criteria for a listing decision and the opinion in *Pacific Legal Foundation* v. *Andrus*, 675 F.2d 825 (6th Cir., 1981), NMFS has categorically excluded all ESA listing actions from the environmental assessment requirements of the National Environmental Policy Act (NEPA) under NOAA Administrative Order 216–6.

As noted in the Conference Report on the 1982 amendments to the ESA, economic impacts cannot be considered when assessing the status of a species. Therefore, the economic analysis requirements of the Regulatory Flexibility Act (RFA) are not applicable to the listing process. In addition, this final rule is exempt from review under E.O. 12866.

This rule has been determined to be major under the Congressional Review Act (5 U.S.C. 801 *et seq.*)

At this time NMFS is not promulgating protective regulations pursuant to ESA section 4(d). In the future, prior to finalizing its 4(d) regulations for the threatened chinook salmon ESUs, NMFS will comply with all relevant NEPA and RFA requirements.

References

A complete list of all references cited herein is available upon request (see **ADDRESSES**). Reference materials regarding this listing determination can also be obtained from the internet at www.nwr.noaa.gov.

Change in Enumeration of Threatened and Endangered Species

In the proposed rule issued on March 9, 1998 (63 FR 11482), Upper Columbia river spring-run chinook salmon was added to paragraph (a) in § 222.23 and Puget Sound, Lower Columbia River and Upper Willamette spring-run chinook salmon were designated as paragraphs (s), (t) and (u) respectively in § 227.4. Since March 9, 1998, NMFS has issued a final rule consolidating and reorganizing existing regulations regarding implementation of the ESA. In this reorganization, § 222.23 has been redesignated as § 224.101, therefore, Upper Columbia River spring-run chinook salmon has been added in this final rule to paragraph (a) in § 224.101. Also in this reorganization, § 227.4 has been redesignated as § 223.102; therefore, Puget Sound, Lower Columbia River and Upper Willamette spring-run chinook salmon have been added in this final rule to paragraph (a) in § 223.102 as (16), (17), and (18), respectively.

List of Subjects

50 CFR Part 223

Administrative practice and procedure, Endangered and threatened

species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

50 CFR Part 224

Endangered and threatened species, Exports, Imports, Marine mammals, Transportation.

Dated: March 15, 1999.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR parts 223 and 224 are amended as follows:

PART 223—THREATENED MARINE AND ANADROMOUS SPECIES

1. The authority citation for part 223 continues to read as follows:

Authority: 16 U.S.C. 1531 *et seq.*; 16 U.S.C. 742a *et seq.*; 31 U.S.C. 9701.

2. In § 223.102, paragraphs (a)(16), (a)(17) and (a)(18) are added to read as follows:

§ 223.102 Enumeration of threatened marine and anadromous species.

* * * * *

(a) * * *

(16) Puget sound chinook salmon (*Oncorhynchus tshawytscha*). Includes all naturally spawned populations of chinook salmon from rivers and streams flowing into Puget Sound including the Straits of Juan De Fuca from the Elwha River eastward, including rivers and streams flowing into Hood Canal, South Sound, North Sound and the Strait of Georgia in Washington.

(17) Lower Columbia River chinook salmon (*Oncorhynchus tshawytscha*). Includes all naturally spawned populations of chinook salmon from the Columbia River and its tributaries from its mouth at the Pacific Ocean upstream to a transitional point between Washington and Oregon east of the Hood River and the White Salmon River, and includes the Willamette River to Willamette Falls, Oregon, exclusive of spring-run chinook salmon in the Clackamas River.

(18) Upper Willamette River chinook salmon (*Oncorhynchus tshawytscha*). Includes all naturally spawned populations of spring-run chinook salmon in the Clackamas River and in the Willamette River, and its tributaries, above Willamette Falls, Oregon.

* * * * *

PART 224—ENDANGERED MARINE AND ANADROMOUS SPECIES

3. The authority citation for part 224 continues to read as follows:

Authority: 16 U.S.C. 1531–1543 and 16 U.S.C. 1361 *et seq.*

4. In § 224.101, paragraph (a) is revised to read as follows:

§ 224.101 Enumeration of endangered marine and anadromous species.

* * * * *

(a) *Marine and anadromous fish.* Shortnose sturgeon (*Acipenser brevirostrum*); Totoaba (*Cynoscian macdonaldi*), Snake River sockeye salmon (*Oncorhynchus nerka*), Umpqua River cutthroat trout (*Oncorhynchus clarki clarki*); Southern California steelhead (*Oncorhynchus mykiss*), including all naturally spawned populations of steelhead (and their progeny) in streams from the Santa Maria River, San Luis Obispo County, California (inclusive) to Malibu Creek, Los Angeles County, California (inclusive); Upper Columbia River steelhead (*Oncorhynchus mykiss*), including the Wells Hatchery stock and all naturally spawned populations of steelhead (and their progeny) in streams in the Columbia River Basin upstream from the Yakima River, Washington, to the United States—Canada Border; Upper Columbia River spring-run chinook salmon (Oncorhynchus tshawytscha), including all naturally spawned populations of chinook salmon in Columbia River tributaries upstream of the Rock Island Dam and downstream of Chief Joseph Dam in Washington (excluding the Okanogan River), the Columbia River from a straight line connecting the west end of the Clatsop jetty (south jetty, Oregon side) and the west end of the Peacock jetty (north jetty, Washington side) upstream to Chief Joseph Dam in Washington, and the Chiwawa River (spring run), Methow River (spring run), Twisp River (spring run), Chewuch River (spring run), White River (spring run), and Nason Creek (spring run) hatchery stocks (and their progeny); Sacramento River winter-run chinook salmon (*Oncorhynchus tshawytscha*).

* * * * *

[FR Doc. 99–6815 Filed 3–23–99; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 223 and 224

[Docket No. 990303060–9060–01; I.D.022398C]

RIN 0648–AM54

Endangered and Threatened Species: Notice of Partial 6-Month Extension on Final Listing Determinations for Four Evolutionarily Significant Units (ESUs) of West Coast Chinook Salmon

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

ACTION: Proposed rule; partial extension of deadline for final determination.

SUMMARY: NMFS has determined that substantial scientific disagreements exist regarding the sufficiency and accuracy of data relevant to final listing determinations for the California Central Valley spring-run and Central Valley fall/late fall-run, Southern Oregon and California Coastal, and Snake River fall-run ESUs of chinook salmon.

By this publication, NMFS intends to extend the deadline for a final listing determination for these four ESUs for 6 months to collect and analyze specific additional information from co-managing agency scientists and other scientific experts on this species that will enable NMFS to make a final listing determination based on the best available scientific information. NMFS has also issued final listing determinations for Puget Sound chinook salmon, Lower Columbia River chinook salmon, Upper Willamette spring-run chinook salmon and Upper Columbia River spring-run chinook salmon which published elsewhere in the Rules and Regulations section of this **Federal Register** issue.

DATES: Comments must be received by April 23, 1999. The new deadline for final action on the four ESUs of west coast chinook salmon is extended from March 9, 1999, to September 9, 1999.

ADDRESSES: Written comments should be sent to Chief, Protected Resources Division, NMFS, Northwest Region, 525 NE Oregon Street, Suite 500, Portland, OR 97232-2737; or to Chief, Protected Resources Division, NMFS, Southwest Region, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802-4213; or to Chief, Endangered Species Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Garth Griffin, 503-231-2005, Craig Wingert, 310–980–4021, or Christopher Mobley, 301-713-1401.

SUPPLEMENTARY INFORMATION:

Background

Historically, chinook salmon inhabited most coastal streams in Washington, Oregon, and California, as well as many inland streams in these states and in Idaho. However, during this century, over 50 indigenous, naturally reproducing stocks of chinook salmon are believed to have been extirpated, and many more have been identified as being at moderate or high risk of extinction in numerous coastal and inland streams in Washington, Oregon, Idaho, and California (Nehlsen *et al.*, 1991; Higgins *et al.*, 1992).

The history of Endangered Species Act (ESA) listing petitions received regarding west coast chinook salmon is summarized in the proposed listings rule published on March 9, 1998 (63 FR 11482). The most recent and comprehensive petition was submitted by Oregon Natural Resources Council and Siskiyou Project Staff Ecologist Dr. Rich Nawa on February 1, 1995. In response to this petition, as well as to earlier petitions, NMFS collected and assessed the best available scientific and commercial data, including technical information compiled from the Pacific Salmon Biological Technical Committees (PSBTCs) and from interested parties in Washington, Oregon, Idaho, and California. The PSBTCs consisted primarily of scientists from Federal, state, and local resource agencies, Indian tribes, industries, universities, professional societies, and public interest groups possessing technical expertise relevant to chinook salmon and their habitats.

NMFS also established a Biological Review Team (BRT) that was composed of staff from NMFS' Northwest and Southwest Fisheries Science Centers and Southwest Regional Office, as well as a representative of the National Biological Survey. The BRT conducted a coastwide status review for west coast chinook salmon (Myers *et al.*, 1998) and identified 15 ESUs in the States of Washington, Oregon, Idaho, and California. These ESUs included two Snake River ESUs already listed under the ESA, one previously identified ESU (mid-Columbia River summer/fall run) for which no listing was proposed and one population (Sacramento River winter-run) that was listed as a ''distinct population segment'' prior to the formulation of the NMFS ESU policy. Based on the results of the BRT report and after considering other information and efforts being made to protect chinook salmon, NMFS proposed (1) Listing two ESUs as endangered; (2) listing five ESUs as threatened; and (3) redefining the Snake River fall-run chinook salmon ESU (previously listed as a threatened species under the ESA in 1992 (57 FR 14653)) to include fall chinook salmon populations in the Deschutes River, and listing the redefined ESU as a threatened species (63 FR 11482, March 9, 1998). NMFS also concluded that at the time four ESUs did not warrant protection under the ESA.

Finding

Within 1 year from the date of a proposed listing, section 4(b)(6) of the ESA requires NMFS to take one of three actions: (1) Finalize the proposed listing; (2) withdraw the proposed listing; or (3) extend the 1-year period for not more than 6 months pursuant to section 4(b)(6)(B)(i) of the ESA. Section 4(b)(6)(B)(i) of the ESA allows NMFS to extend the deadline for a final listing determination for not more than 6 months for the purpose of soliciting additional data. NMFS' ESA implementing regulations condition such an extension on the finding of ''substantial disagreement among scientists knowledgeable about the species concerned regarding the sufficiency or accuracy of the available data relevant to the determination.'' (50 CFR 424.17(a)(1)(iv)).

NMFS has analyzed new information and public comments received in response to the March 9, 1998, proposed rule. As a result of the new information and comments, NMFS has determined that substantial scientific disagreements exist regarding the sufficiency and accuracy of data relevant to final listing determinations for California's Central Valley spring-run and fall/late fall-run and for Southern Oregon and California Coastal and for Snake River fall-run chinook salmon ESUs (Memorandum from U. Varanasi and M. Tillman to W. Stelle and W. Hogarth, October 30, 1998). These scientific disagreements concern the consistency of analysis used to identify temporal runs of chinook salmon in the same basin, the data needed to determine the geographic boundaries of certain ESUs, and information related to the risk assessment for some chinook salmon ESUs. Therefore, NMFS extends the final listing determination deadline for these four ESUs for 6 months to collect and analyze these additional data.

Several efforts are underway that may resolve the scientific disagreements relevant to these ESUs. These efforts include (1) analysis of tissue samples of

Central Valley, Southern Oregon and California Coastal, and Upper Klamath and Trinity River spring- and fall-run chinook salmon that have been and will be collected this summer and fall by various parties, including the California Department of Fish and Game (CDFG) and NMFS, to help determine the genetic relationship between conspecific temporal runs of chinook salmon in these ESUs; (2) collection of Deschutes River fall-run chinook salmon samples by the Confederated Tribes of the Warm Springs Reservation (CTWSR) which will be genetically analyzed by the Washington Department of Fish and Wildlife and used by NMFS to determine the genetic makeup of these chinook salmon in relationship to the genetic structure of listed Snake River fall-run chinook salmon; and (3) analysis of additional genetic and abundance data regarding the ratio of hatchery-to-natural fall-run chinook salmon in California's Central Valley. A more detailed discussion of the areas of substantial scientific disagreement and of the efforts to resolve it follows.

Points of Substantial Scientific Disagreement

Knowledgeable scientists from state fish and wildlife agencies, tribes, the public, and some peer reviewers dispute the sufficiency and accuracy of data employed by NMFS in its proposed listing of west coast chinook salmon ESUs in California, Oregon, and Washington. The primary areas of dispute fell into two broad categories: issues relating to ESU definitions and issues relating to risk assessment. The following sections briefly discuss the types of data that are subject to disagreement within each category.

Issues Relating to ESU Definitions

Two points of scientific disagreement may affect chinook salmon ESU boundaries. One area of disagreement concerns NMFS' treatment of diverse life history forms within the individual ESUs, specifically the relationship between spring and fall chinook salmon in the same river basins. Comments received focused on NMFS' use of primarily genetic data in making its determination to combine spring and fall chinook salmon into a single ESU. Some commenters argued that not all relevant life history characteristics are apparent through an analysis of discrete genetic markers.

CDFG, U.S. Fish and Wildlife Service, Hoopa Valley Tribal Council (HVTC), Yurok Tribal Fisheries Program (YTFP), and several of the peer-reviewers, as well as a number of local government agencies, conservation groups, and private citizens, all felt that in a number of cases where spring- and fall-run chinook salmon were included in the same ESU, separate ESUs should have been established. These recommendations were supported with information on ecological differences in spring and fall-run spawning and juvenile rearing habitat. Furthermore, it was argued that separation in spawning time and location provided a significant amount of reproductive isolation, even in those systems where dams had restricted access to historical spring-run spawning habitat. Several of the commenters highlighted these ecological and life history differences in those ESUs where genetic data were limited or lacking. Furthermore, the commenters stated that the lumping of spring and fall runs in the Klamath River ESU and in coastal ESUs was inconsistent with the recognition of separate fall- and spring-run ESUs in California's Central Valley and the upper Columbia River Basin.

However, another point of disagreement concerns whether there is significant reproductive isolation between spring and fall chinook salmon to warrant their designation as separate ESUs. One peer reviewer indicated that the genetic differences observed between the Central Valley fall/late fall- and Central Valley spring-run ESU were not compelling enough to justify their separation into two ESUs. NMFS will receive new samples of spring and fall chinook salmon from CDFG and CTWSR at the conclusion of the run year early in 1999 and will need time to analyze these additional data.

The relationship between different chinook salmon temporal runs within the same geographic areas varies by region. For example, in Puget Sound and in the Columbia River, considerable information is available on the relationship between spring- and fall-run populations. The two runs are well differentiated by both genetic and life history traits in the upper Columbia and Snake Rivers, whereas the same characters show only modest differences between runs in Puget Sound. These patterns are well established and are not likely to change if additional information were gathered.

The relationship of different temporal runs in some other areas, especially those south of Cape Blanco, Oregon, are much less clear. NMFS had limited genetic information on the relationship between spring and fall runs in California's Central Valley and in the Klamath River Basin. The only allozyme information available for spring-run chinook salmon in both of these regions is from hatchery broodstocks. Furthermore, available information suggests that these ''spring-run'' broodstocks have undergone significant hybridization with fall-run chinook salmon returning to the Feather River Hatchery in the Central Valley. In the Upper Klamath and Trinity River ESU, there was no genetic information available for naturally-spawning populations. NMFS concluded that the case for separating the spring and fall runs in this ESU on an ecologic and life-history basis alone was not as compelling as was the case in the Central Valley. However, NMFS will review this decision if new genetic information on naturally-spawning spring-run populations becomes available to NMFS.

Another scientific disagreement concerning California's Central Valley spring-run chinook salmon ESU concerns the origins of some spring-run chinook salmon populations. Disagreements have arisen concerning the origin of the recently increasing number of spring-run chinook salmon in Butte Creek, a tributary of the Sacramento River. The California Department of Water Resources and CDFG presented genetic information which indicates that the spring-run chinook salmon population in Butte Creek is not the result of Feather River Hatchery stray chinook salmon, as NMFS suggested might be the case. New DNA data suggests that Butte Creek spring-run chinook salmon may be more closely related to spring-run fish in Deer and Mill Creeks than to fall or late-fall run stocks. NMFS was unable to positively ascertain the origin of spring-run chinook salmon in Butte Creek at the time of the proposed listing and is curently analyzing new genetic samples of Butte Creek spring-run chinook salmon provided by CDFG so that it can more accurately address questions concerning ESU configurations and abundance within the Central Valley.

Scientific disagreement was also raised by the Oregon Department of Fish and Wildlife (ODFW), CDFG, and a number of other commenters who disputed the geographic boundaries of the Southern Oregon and California Coastal chinook salmon ESU. Comments focused on two issues: (1) Splitting the ESU just south of the Klamath River; and (2) revising the southern boundary to the Russian River or north of the Russian River. Genetic data presented in the status review indicate that within this ESU there are two somewhat distinct subgroups (the first group includes populations from Cape Blanco to the Klamath River Basin, inclusive, and the second group includes populations south of the Klamath

River). These commenters argued that the genetic distance separating these groups is comparable to the distance between other ESUs recognized by NMFS (e.g., between Upper Columbia summer and fall-run and Snake River fall-run ESUs, and Oregon Coast and Washington Coast ESUs). Furthermore, these commenters argued that there are considerable ecological differences between the northern and southern populations within this large ESU. These geological and environmental differences had been used by NMFS, in part, to separate coho salmon and steelhead from this large geographic area into two separate ESUs. ODFW further contended that the depressed status of chinook salmon in the southern portion of this ESU was dramatically different from that found in the northern part, and that the causal factor(s) for this difference may be related to environmental and management differences between the regions of this ESU.

The second geographic boundary issue that was presented by reviewers was the boundary of the southern border of the Southern Oregon and California Coastal ESU. Several citations were given to substantiate claims that self-sustaining chinook salmon populations do not presently, and did not historically, exist in river basins south of the Russian River or in San Francisco Bay. Additionally, some commenters contended that chinook salmon native to the Russian River are extinct, and that the historical abundance of the population was never very large and may have been intermittent. Part of the rationale for not dividing the Southern Oregon and California Coastal ESU was based on the absence of biological information on populations in the southern portion of the ESU. Although genetic information was available for these southern stocks, the differences observed were not consistent with the genetic differences used to distinguish other ESUs.

Information on the historical distribution of chinook salmon south of the Mattole River is very limited. Historical records from the turn of the century indicate that the southernmost population was in the Ventura River. The only extant coastal populations south of the Mattole River are a fall-run population(s) in the Ten-Mile River (Mendocino County) and possibly the Russian River. CDFG and other reviewers concluded that the native run in the Russian River was extirpated early in this century, and genetic information and hatchery transfer records indicate that the current population is composed of a myriad of introduced stocks. Chinook salmon have also been observed spawning in the Guadalupe River (south San Francisco Bay) and have been recently observed in several other tributaries in San Francisco Bay (Coyote Creek), San Pablo Bay (Sonoma Creek, Napa River), and Suisun Bay (Walnut Creek) (SOE, 1996), but NMFS was unable to resolve the origin of these populations.

Regarding the Snake River fall-run chinook salmon ESU, ODFW, CTWSR, the Columbia River Inter-Tribal Fish Commission (CRITFC), and other reviewers disagreed with the inclusion of the Deschutes River fall-run chinook salmon in this ESU. They argued that the Deschutes River and Snake River Basins are ecologically distinct. Furthermore, the geographic distance between these basins would preclude any significant genetic exchange, especially if one considers the historical spawning distribution of the Snake River chinook salmon. A number of scenarios were suggested that might explain the genetic similarity between the Deschutes River and Snake River fall-run populations. One scenario presented by ODFW suggested that, after the loss of the majority of their historical spawning habitat, the remaining Snake River fall-run populations no longer represent the genetic characteristics of the historical ESU. They stressed that the existing allozyme information NMFS analyzed was acquired after the Columbia River Basin had undergone considerable alterations (mainstem dam construction) and many of the native populations had been extirpated. An alternative view is that because the genetic differences between all ocean-type chinook salmon above the Dalles Dam are relatively small, the clustering of populations is subject to uncertainty and possible bias, depending on the procedures used. The commenters also suggested that the marine coded-wire tag recovery information for the Deschutes River fall-run populations may be biased due to the limited number of tags recovered and the limited number of brood years that were tagged. CTWSR asserted that an ocean-type summer-run existed (and may still exist) in the Deschutes River, and this would evolutionarily link the Deschutes River ocean-type fish more with ocean-type fish in the Upper Columbia summer/fall-run ESU, which (unlike the Snake River fall-run ESU) also includes summer-run populations.

Some reviewers suggested that all ocean-type chinook salmon above the historical location of Celilo Falls should be considered a single ESU. The most commonly suggested alternative ESU configuration was for a separate ESU that would include the Deschutes River, and the now extinct populations that once spawned in the John Day, Umatilla, and Walla Walla Rivers.

Considerable uncertainty exists regarding the Snake River fall-run chinook salmon ESU configuration, and none of the alternatives considered (including the configuration in the proposed rule) for these chinook salmon populations can be convincingly substantiated by the existing scientific evidence.

Issues Related to Risk Assessment

Risk assessment involves the collection and analysis of data on the abundance and status of west coast chinook salmon and the threats presented by various human activities and natural occurrences. In its ''Factors for Decline'' report for west coast chinook salmon, NMFS identified the principal threats to chinook as past and present harvest and hatchery practices, habitat loss, fragmentation, and degradation, as well as adverse ocean conditions (NMFS, 1998).

With respect to abundance data, several commenters argued that NMFS lacked sufficient and accurate data to estimate current chinook salmon abundance. These commenters argued that NMFS failed to accurately estimate the number and effects of hatchery fish spawning in the wild, and that NMFS' analysis upwardly biased its assessment of the risks facing chinook salmon in those instances.

The Association of California Water Agencies and other resources agencies disagreed with NMFS' conclusion that a considerable portion of the naturally-spawning population in the Central Valley were hatchery strays. They argued that in the absence of definitive information regarding the proportion of strays spawning naturally that NMFS could not adequately define risks. Additionally, they argued that if hatchery and natural populations were indistinguishable (due to the use of broodstocks from within the ESU) and hatcheries are needed to mitigate lost habitat, then hatchery abundance should be included in the risk determination. Furthermore, one estimate of the hatchery stray rate (20 percent) is much lower than that found in other ESUs that were not recommended for listing.

NMFS considered several different estimates of hatchery contribution to naturally spawning chinook salmon populations in the Central Valley. The estimates of stray rates varied from 20 to over 50 percent. Additionally, NMFS inferred the status of naturally-spawning populations by comparing the

abundance trends for populations that were near hatchery release sites relative to those more distantly situated. Recent information indicates that stray rates for many basins, especially those in the San Joaquin River Basin, are well in excess of 50 percent, but may be quite low for selected basins in the upper Sacramento River. Additional spawner survey, smolt sampling, and coded-wire-tag recovery data have been received from CDFG, the water resource agencies, and other comanagers. This information begins to fill an important void in NMFS' understanding of the relationship between hatchery and spawning fish. There are still a number of major basins for which there is limited, dated information on spawner strays. NMFS and CDFG staff are currently collecting additional information and data to help resolve these substantial scientific disagreements.

In the case of Central Valley spring-run chinook salmon, spawner abundance in Butte Creek increased from less than a hundred to several thousand in a few years; the 1998 abundance estimate for the Butte Creek spring run is approximately 19,000 spawners. This increase was so abrupt that it caused some speculation that it was not due to natural production. Furthermore, water from the Feather River had been diverted into Butte Creek to improve flows, and it was suggested that this may have attracted Feather River Hatchery fish. If these fish are included in the total abundance estimate for the Central Valley spring-run chinook salmon ESU, it represents a several fold increase in total spring-run chinook salmon abundance and this new information may affect NMFS' determination. NMFS was unable to positively ascertain the origin of spring-run chinook salmon in Butte Creek at the time of the proposed listing, and our recently collected genetic samples have yet to be fully analyzed.

Prospects for Resolving Existing Disagreements

Several efforts are underway that may resolve scientific disagreement regarding the sufficiency and accuracy of data relevant to these listings. Currently, NMFS is obtaining genetic samples from naturally-spawning spring- and fall-run populations in the Central Valley and the upper Klamath and Trinity River Basins. Furthermore, a number of co-managing agencies (U.S. Forest Service, CDFG, the Natural Resources Conservation Service, HVTC, and YTFP) in the Upper Klamath and Trinity Rivers and Southern Oregon and Coastal California ESUs have collected samples for microsatellite DNA analysis from both spring and fall runs. These samples would be very useful in determining the relationship between conspecific temporal chinook salmon runs within an ESU, as currently defined, and would provide a wider geographic context for the DNA data that were utilized in determining the configuration of the California chinook salmon stocks. Additionally, DNA information has been made available from California State agencies for an additional naturally-spawning spring run in California's Central Valley (Butte Creek). Over the next few months the analysis of this genetic information will be completed at the Bodega Bay Marine Laboratory and Hopkins Marine Station Laboratory (DNA samples) and by NMFS (allozyme samples). The results will provide a more complete picture of the genetic relationship between conspecific temporal runs and may significantly alter the configuration of the proposed ESUs.

Presently, there are reports of chinook salmon (of unknown run size and origin) spawning in a number of tributaries to Suisun Bay, San Pablo Bay, and San Francisco Bay. New information is being gathered by NMFS to document the occurrence of spawning chinook salmon throughout San Francisco Bay and the lower Delta region.

Regarding the Snake River fall-run chinook salmon ESU, ODFW and CTWSR are currently collecting new genetic samples from fish spawning in the Deschutes River. Samples are being taken from above and below Sherars Falls to establish whether multiple populations exist within the Deschutes River. The CTWSR is also reviewing historical environmental data for the Deschutes and Snake River Basins. CTWSR and CRITFC will prepare a report of the results of their studies for NMFS to review by late spring 1999.

For California's Central Valley ESUs, NMFS will receive and analyze additional spring- and fall-run genetic samples as well as rigorously evaluate ecological characteristics to determine if further subdivision of these ESUs are warranted. Currently, NMFS is obtaining tissue samples for allozyme analysis from Butte Creek, Deer Creek, and possibly Mill Creek (the latter two sites contain what are generally thought to be the native spring runs). The inclusion of these samples in the NMFS allozyme database should help resolve the origin of the Butte Creek fish, and evaluate the reproductive isolation of conspecific temporal relationships between spring- and fall-run chinook salmon in the Sacramento and San Joaquin Rivers.

Determination

NMFS expects that information that has just become (or will soon become) available will, when fully analyzed, significantly help to resolve scientific uncertainties associated with ESU determinations and/or extinction risk analysis for the chinook salmon ESUs discussed earlier in this document. Four of these chinook salmon ESUs were proposed for listing in 1998: Central Valley spring- and fall/late fall-run, Southern Oregon and California Coastal, and Snake River fall-run chinook salmon. This information should also help clarify the ESU configuration and status of populations in the Upper Klamath and Trinity Rivers ESU (an ESU that was not proposed for listing), thus providing greater certainty and consistency in ESU determinations coastwide.

With respect to the other ESUs of chinook salmon that were proposed for listing on March 9, 1998 (Puget Sound, Lower Columbia River, Upper Willamette River, and Upper Columbia River spring-run), NMFS has made final listing determinations published elsewhere in the Rules and Regulations section of this **Federal Register** issue.

The scientific disagreements concerning data and analyses discussed earlier are substantial and may alter NMFS' assessment of the status of California's Central Valley spring-run and Central Valley fall/late fall-run, Southern Oregon and California Coastal, and Snake River fall chinook salmon ESUs. In light of these disagreements and the fact that more data are forthcoming on risk assessment and ESU boundaries, NMFS extends the final determination deadline for California's Central Valley spring-run and Central Valley fall/late fall-run, Southern Oregon and California Coastal, and Snake River fall-run chinook salmon ESUs for 6 months from the 1-year decision deadline, until September 9, 1999. During this period, NMFS will analyze new information aimed at resolving these disagreements. New information or analyses may indicate that changing the proposed status of one or more of these ESUs of west coast chinook salmon is warranted, and NMFS will either finalize, withdraw, or modify the proposed rule accordingly.

Request for Comments

In addition to collecting and analyzing data received, NMFS seeks additional comments on the information presented in this **Federal Register** document. Comments must be received by April 23, 1999.

References

A complete list of all references cited herein is available upon request (see **ADDRESSES**).

Authority: 16 U.S.C. 742a *et. seq.*; 16 U.S.C. 1361 *et seq.*; 16 U.S.C. 1531 *et seq.*; 16 U.S.C. 1531–1543; 16 U.S.C. 31 U.S.c. 9701.

Dated: March 15, 1999.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

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March 24, 1999

Part III

Department of Labor

Employment and Training Administration

Consultation Paper on Performance Accountability Measurement for the Workforce Investment System Under Title I of the Workforce Investment Act; Notice

DEPARTMENT OF LABOR

Employment and Training Administration

Consultation Paper on Performance Accountability Measurement for the Workforce Investment System Under Title I of the Workforce Investment Act

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The purpose of this notice is to disseminate consultation papers for interested parties on the Performance Accountability Measurement System for Title I of the Workforce Investment Act. There are two papers. The first presents the broad framework for Core Measures of Performance and Customer Satisfaction specified in Title I, Section 136. The second presents the framework for Negotiating State Adjusted Levels of Performance as specified in Title I Section 136. These papers are to be used by States intending to implement the Workforce Investment Act as of July 1, 1999. The Department of Labor will work with States individually to ensure that there are no negative consequences if significant changes occur in these papers based on the comments received. Interested parties have 30 days to provide comments on these papers. Over the next several months additional consultation papers will also be disseminated for comment.

FOR FURTHER INFORMATION CONTACT: Mr. Eric Johnson, Workforce Investment Implementation Taskforce Office, U.S. Department of Labor, 200 Constitution Avenue, NW, Room S5513, Washington, DC, Telephone: (202) 219–0316 (voice) (This is not a toll-free number), or 1–800–326–2577 (TDD). Information may also be found, or comments provided, at the website—http://usworkforce.org.

SUPPLEMENTARY INFORMATION: The Workforce Investment Act (WIA or Act), Pub. L. 105–220 (August 7, 1998) provides the framework for a reformed National workforce and employment system designed to meet the needs of the Nation's employers, job seekers and those who want to further their careers. Title I of WIA specifies Core Performance and Customer Satisfaction measures. Each Governor must submit a five-year strategic plan no later than April 1, 1999, to begin WIA programs by July 1, 1999, and no later than April 1, 2000, to begin WIA programs by July 1, 2000. The current law, the Job Training Partnership Act, is repealed effective July 1, 2000. States planning to implement during PY 1999 are to utilize these papers in addressing Performance Accountability in their plans.

An important part of the five-year strategic plan is the establishment of performance levels for each of the core performance and customer satisfaction measures, which will be negotiated between the Governor and the Secretary of Labor. These levels will form the basis for incentives and sanctions as specified in Title I, section 136 and Title V, section 503 of the Workforce Investment Act.

The U. S. Department of Labor is establishing this performance accountability measurement system, and the process for reaching agreement on State adjusted levels of performance. These two consultation papers are part of that effort. Some of the questions on which the Department of Labor is seeking input are the following:

- Which services would be appropriately defined as self-service/informational and thus not included in the core measures, and which services fall into the core services, intensive services or training;
- The point at which adult and youth registrants are counted for different performance measures (e.g., at a certain time after registration, during the reporting period, after completion of service, after program exit);
- The use of wage records for performance measurement considering availability, completeness, accuracy, timeliness and when wage records might be combined with supplemental sources (i.e., administrative records or survey data for performance purposes) considering the need for consistency, comparability and cost effectiveness;
- Who will be counted in the numerator and/or denominator of those measures expressed as rates, for example how should the employed and underemployed who receive services be accounted for;
- Identifying possible unintended effects resulting from definitions/policies around performance measurements;
- Identifying burdensome and unnecessary requirements that will provide limited benefit, but will be costly in terms of both record keeping requirements and processing;
- Using adjustment models in (1) negotiating State adjusted levels of performance to account for differences in service mix, participant characteristics and labor markets and/or (2) determining eligibility for incentives and consideration for sanctions comparing negotiation assumptions with actual information.
- Sources and types of information that would be useful in negotiating State adjusted levels of performance;
- The circumstances in which revisions to State adjusted levels of performance will be required by the Department, including special circumstances for early implementing States and the differences between the first program year and subsequent years covered by a State's 5-year plan. For example, if better data available in later years or if actual performance data shows that the assumptions under which State adjusted performance levels were negotiated are incorrect, should the Department require that approved levels for later years be changed.

Please consider these issues as you review these consultation papers, and provide comments.

Signed at Washington, DC, this 17th day of March 1999.

Raymond L. Bramucci,

Assistant Secretary of Labor, Employment and Training Administration.

Attachment 1—Performance Accountability Measurement for the Workforce Investment System

I. Introduction

The Workforce Investment Act (WIA) calls for a comprehensive accountability system to assess the effectiveness of State and local areas in providing employability and training services. The Act requires:

- A focus on results defined by ''core indicators'' of performance;
- Customer Satisfaction with programs and services measured and related to results;
- A strong emphases on Continuous Improvement of Services;
- Annual performance levels and improvement plans developed during negotiations among Federal, State and local partners;
- Awards and Sanctions based on State performance; and
- State reporting and record keeping.

In addition, States are required to provide annual reports to the Secretary of Labor with respect to progress in achieving State performance measures. The Act requires certain additional information be provided, such as cost of workforce investment activities and specified recipient data.

This paper presents a draft framework for the workforce investment system core performance and customer service measures that apply to States in Title I of the WIA and will be used in determining State adjusted performance levels, eligibility for incentive grants or imposing sanctions. Additional papers on all of the above listed requirements

are being developed and will be provided for comment in the coming weeks. This paper is intended to elicit discussion about how success will be defined for workforce investment system activities and how it can efficiently and effectively be measured Statewide. The concepts within the paper build on previous Department of Labor (DOL) efforts such as the Workforce Development Performance Measures Initiative, the Labor Exchange Performance Measures Work Group, Simply Better!, Employment Service (ES) Reinvention and the Enterprise. It also incorporates input from State and local officials that was received at recent consultations focusing on WIA accountability and from other WIA briefings and communications.

Please keep in mind that this document presents an overall framework. It does not fully address a number of the detailed technical and operational issues that were raised at recent consultations, nor is it intended to serve as reporting instructions. In addition to your feedback on this framework, we are also interested in input on technical and operational issues that may not have been addressed by this paper. All of this input will be used to develop further guidance and finalize the document for use by those States planning to implement the Workforce Investment Act before July 2000. This paper includes proposed definitions for the Core Indicators of Performance that will be used for State incentive grant eligibility determinations and sanctions.

The paper is divided into three sections:

- Adult Performance Measures and Definitions that will apply separately to: (1) Adult Services, (2) Dislocated Worker services, and (3) Services to Eligible Youth 19 to 21 years old in Youth programs under Section 129 of WIA.
- Youth Performance Measures and Definitions for Services to Eligible Youth 14 to 18 years old in the Youth Program.
- Customer Satisfaction Measures for Participants and Employers.

While the specific core performance indicators and customer satisfaction indicators outlined in this paper only apply by law to Title I of WIA, DOL may adopt them, as appropriate, for other DOL programs, and will work in cooperation with other Federal partner agencies to reach agreement where feasible on uniform measures. Thus, all partners are encouraged to review and comment on this draft framework. However, any changes to other programs whether internal or external to DOL would require appropriate actions based upon present Laws, Regulations and/or policies.

Definitions to be used by all States and localities are provided for each of the core indicators and customer satisfaction measures to ensure comparability. Comparability of measures among States is important for two reasons. First, core indicators and the customer satisfaction performance levels are to be negotiated between the States and DOL. One of the factors affecting those negotiations are ''how the levels compare with State-adjusted levels of performance established for other States * * *'' Second, comparability also contributes to continuous improvement. Having standard definitions will allow States and localities to benchmark other States and localities to promote continuous improvement. Comparability also will facilitate the sharing of best practices within and among the States. Since the performance and accountability system under WIA includes incentives and sanctions, comparability is important to fairness and equity.

Continuous improvement is a significant and required element of WIA. States and localities need to collect more substantial data than the core measures or other required measures under the Act to function in a continuous improvement environment. Therefore, it is important for State and local leadership to take advantage of the opportunity when developing their performance systems to go beyond Federal requirements.

II. Adult/Dislocated Worker Services

A. Workforce Investment Act (WIA) Requirements/Program Activity Categories for Reporting

The WIA provides for a continuum of service delivery that includes three levels of services: (1) core services; (2) intensive services; and (3) training services. All persons will have access to core employment-related information and self-service tools without restrictions or additional eligibility requirements, assuming sufficient funds are available. Those core services that are not primarily informational and must be staff-assisted will require WIA registration. Intensive services and training will also require WIA registration. The intensive services are provided when a determination is made that unemployed individuals are or would be unable to obtain employment after receiving the basic core services, or when employed individuals are determined to be in need of these intensive services to obtain or retain employment that allows for self-sufficiency. Similarly, training services are only available after a determination that the individual is unable to obtain or retain employment that leads to self-sufficiency through intensive services.

For accountability purposes, WIA establishes core indicators of performance in State and local WIA financed systems for participants in all workforce investment activities other than self-service and informational activities. This exception recognizes the low cost per unit of providing these services. WIA also requires that States and localities report on how participants in workforce investment activities other than training (except for self-service and informational activities) compare to participants in training activities. Therefore, the level of service individuals receive defines whether the individual will be counted in the core indicators and if so, how they will be categorized for reporting purposes.

Many of the core services generally will be low cost, self-service and consist primarily of information and not require registration. In contrast, intensive services will be more costly, require significantly more staff investment, and thus, justify a different measurement system that calls for registering and tracking individuals throughout their program participation. For reporting, services are divided into—

- Core Services (for registered participants)
- Intensive Services
- Training

Consistent with WIA, participants who use one-stop self-service facilities or only access information do not need to be registered and tracked. Access to some Core Services will be universally available through the Internet, at a One-Stop center or through a One-Stop partner. States and local Boards will be free to allow completely anonymous access to core services that are primarily information and universally available (for example, browsing a job bank or using a computer in the resource room). However, States and local Boards may be encouraged to request unique identifying information about customers who use the Internet (for example, current America's Job Bank account) and who use the universally available self-service capacity in One-Stop centers.

For customers who are assessed for purposes of determining whether they require services or training that are not universally available, additional information will need to be collected as part of the assessment process. This information will include demographic data elements such as racial-ethnic

characteristics, veteran status and information on disabilities, and will assist in referring individuals to other partners' services and will be available for comparisons of program applicants and registrants.

B. What Services Fall Into What Category?

The categorization of services is a State or local decision and will depend on the nature of the service. To serve as a guide and to assist in this identification, Table 1 includes most of the core, intensive, and training services described in Section 134(d). Each of the required WIA services is *italicized*. Frequently provided services that are in addition to those required by the legislation are not italicized. Given the wide variation in types of service that can be categorized as job search and placement assistance, and career counseling, finer distinctions have been made for these services. As soon as a participant moves from the self-service/informational level of service to registered service (core, intensive, training) core measures apply.

TABLE 1.—CATEGORIES OF SERVICES

A. Core services—Self-service and information	B. Other core services (registration required)	C. Intensive services (registration required)	D. Training (registration required)
Determination of eligibility to receive assistance.	Follow-up services, including counseling for registrants (those previously receiving intensive/training services) after entering employment.	*Comprehensive and specialized assessment, including diagnostic testing and interviewing.*	*Occupational skills training.*
Outreach, intake (which may include profiling), and orientation to the One-Stop center.	Individual job development	*Development of individual employment plan.*	*On the Job Training.*
Initial assessment of skill levels, aptitudes, abilities, and support service.	Job clubs	*Group counseling*	*Workplace training and cooperative education programs.*
Labor Market Information	Screened referrals (testing and background checks done before referral or when operating as the employers agent).	*Individual counseling and career planning.*	*Private sector training programs.*
Consumer reports information and delivery system performance information.		Case management	*Skill upgrading and retraining.*
Information on other One-Stop partner services and supportive services.		*Short term pre-vocational services.*	*Entrepreneurial training.*
Information on filing UI claims.			Job readiness training.
Assistance in establishing WtW eligibility and other non-WIA training and education.			Adult education and literacy activities in combination with training.
Resource Room usage			Customized training.
"How to" group sessions (e.g. writing a resume).			
Job referrals (informational, e.g., job scouts, ES referrals in non-exclusive hiring arrangements, short-term or seasonal placements).			
Internet browsing—job, info, and training searches.			
Internet accounts—Career Kit, Personnel Kit.			
Talent referrals (informational, e.g., talent scouts, ES staff referrals of resumes without further screening).			

The following considerations provided some of the rationale used in preparing this guide. First, ''self-service and informational activities'' are by their nature core services that do not require registration and tracking. A second consideration is the likely per unit cost of services. A number of placement activities are primarily informational in nature and relatively low cost. In these instances, the added cost of registration and participant tracking may not be justifiable. Thirdly, some services benefit participants but are undertaken primarily for their value to employers (e.g., assistance with recruitment for seasonal work—summer or holiday) are intended only to provide short term employment and do not necessarily increase worker earnings, retention or occupational skill attainment. Fourthly, these groupings of activities are intended to be clean, easy to administer, and applicable to all programs.

C. How to Measure Core Services, Intensive Services and Training

1. Core Indicators of Performance

Measure	Definition
Entry into Unsubsidized Employment:	
Entered Employment Rate (Sec 136(b)(2)(A)(i)(I)).	The rate will be defined for cohorts of registered participants unemployed at the time of registration. The numerator will be the number of these registered participants that are shown to have paid employment in the quarter following registration or service completion. The denominator will be all registered participants unemployed at the time of registration who were active during the reporting period (received services or continuing from a prior period) but who are no longer actively receiving services, other than post-employment services. This includes enrolled participants who (1) have obtained unsubsidized employment; (2) have withdrawn from participation; or (3) who have completed training or services. Individuals should be considered no longer active and to have completed service if they have received no services in the last quarter of the reporting period, and are not scheduled to receive services in the future. **Note:** State and local officials opposed using a program exit or termination to trigger reporting. Records of all registered participants unemployed at the time of registration, and not enrolled in a training program at the end of the reporting period would be drawn and matched against wage records to identify employment. Dislocated workers as defined in WIA, Title I, subtitle A, sec.101 (9) are included in the definition of unemployed. A person is considered employed if his/her social security number appears in the employer wage report (no minimal wage requirement) in the quarter following the one in which the seed record for matching is drawn. Not all jobs are covered by State UI wage records. Therefore, a State or locality may supplement the results of the wage record review by other methods and count as employed any of these individuals in jobs not covered by the State's UI wage records. Again, employment would be determined based on employment in the quarter following the one in which the seed record is drawn. Supplementary information could include: use of the New Hire index, surveys, self-reported hires or staff-reported hires through an administrative record system. Seed records not shown as employed would be matched against administrative records to exclude from the computation individuals who remain active, i.e, have received services in the last quarter or are scheduled to receive them in the future.
Retention in unsubsidized employment Six Months after entry into the employment:	
Six Month Retention Rate (Sec 136(b)(2)(A)(i)(II)).	The rate is computed using information on the total number of registered participants who have employment and who appear in the wage records, and wage record information for the second quarter thereafter (6 month rate). For example, an individual completing training and placed immediately in the first quarter of the program year, would be recorded as employed in the second quarter. The fourth quarter records would be queried to determine retention. **Note:** retention is not limited to the same employer.
Earnings Received in Unsubsidized Employment Six Months After Entry into Employment:	
Average Earnings Change in Six months (Sec 136(b)(2)(A)(i)(III)).	The average earnings change is measured as follows: the wage record earnings for the registered participant in the two quarters following employment (not counting the quarter in which employment was recorded) less 50% of the wage record earnings for the four quarters prior to enrollment (not counting the quarter of enrollment). The post-employment income can be with the same or other employer in which the placement was first noted. The measure is reported as an average (mean) gain. For Incumbent workers and others who are employed at the time of registration average earnings and retention would be computed begining in the second quarter following the quarter in which services are completed.
Educational Credential/Occupational Skills	
Credential Attainment Rate (Training Services Only) (Sec 136(b)(2)(A)(i)(IV)).	For adults entering employment after training and eligible youth 19 through 21 entering employment, post-secondary education or advanced training after training, the percent who attained a State-recognized credential related to educational skill attainment (diploma, degree or certificate) or attainment of an occupational skill (license or certification) recognized by a State or a Nationally-recognized industry trade body. Information in administrative records or information gathered through electronic interfaces with other data bases available or surveys may be used. Additional guidance on acceptable credentials and certificates will be provided.

2. Why These Measures and Definitions?

Wage record versus surveys. WIA requires that wage records be used but does not exclude the use of surveys to supplement information. Where the same information is obtainable from both sources, instructions will provide that wage records be used both to ensure comparability among States and to minimize costs.

Earnings change versus absolute earnings level. A change—gain/loss—measure was chosen because of the different circumstances within the WIA service population and the difficulty of creating an absolute earnings target for all adults.

Earnings change—prior period earnings. Six month comparisons are made with a full twelve month period prior to registration. (Fifty percent is used for the six month change for comparability of periods.) The twelve month period is used to minimize, to the extent possible, the impact on dislocated workers of reduced earnings as layoffs approach and any severance pay that may be added to earnings.

Retention rate. While most of the measures use the registered population as the base, this measure chooses only those who are employed because the retention question makes no sense in another context.

Credentials rate (Training Service only). Adults entering employment after receipt of core or intensive services also may acquire some credential as a result of WIA participation. However, given the few relative to the number who will be employed after receiving services, the cost of this added information collection is not justified.

III. Youth 14 to 18 Years Old

A. WIA Requirements/Guiding Principles

WIA authorizes programs to provide services to prepare youth to enter the workforce or to advance to postsecondary education or other occupational skills training. Programs link academic and occupational learning. Service providers will have strong ties to employers and must also include tutoring, study skills training and instruction leading to completion of secondary school (including dropout prevention). Other elements of programs should include alternative school services, mentoring by appropriate adults, paid and unpaid work experience (such as internships and job shadowing, occupational skills training, leadership development, and appropriate supportive services.) Youth participants also will receive guidance and counseling and follow-up services for at least one year. Programs must also provide summer job opportunities linked to academic and occupational learning. The mix of year-round and summer activities is left to local discretion.

Eligible youth are low-income, ages 14 through 21 with barriers to employment. WIA specifies different youth core indicators for older youth ages 19 through 21 and for youth ages 14 through 18. The older youth performance measures are identical to the adult program measures and were addressed earlier in the paper. The three required core indicators for youth ages 14 through 18 are—

- Attainment of basic skills and, as appropriate, work readiness or occupational skills;
- Attainment of secondary school diplomas and their recognized equivalent;
- Placement and retention in postsecondary education or advanced training, or placement and retention in military service, employment, or qualified apprenticeships.

B. Guiding Principles

- Performance measures should reflect the same flexibility available for program design and services and the varied successful outcomes recognized. WIA allows a wide variety of services that are offered to youth. This provides the opportunity for local programs to design and operate programs that meet local needs and respond to gaps in services as they are identified for their area. Indicators should not force certain designs to remain competitive in terms of measurement.
- Performance measures should accommodate a variety of different approaches to serving youth without forcing arbitrary time limits or sequencing of services. Measures should not determine when youth begin or end services by forcing measurements before participants are ready to complete their goals or require that a youth leave the program before credit can be taken for outcomes achieved. Research has shown that programs that establish an ongoing relationship with youth, and continue to serve them for several years while adjusting goals and services to reflect needs as youth age have the greatest success.
- Performance measures need to recognize that youth goals change as youth mature and must be age appropriate. The denominator for various rates should depend on the appropriateness of the goal as determined through individual service plans. For example, younger youth participants should receive services that encourage staying in or returning to school and keeping up academically. As the participants get older, goals will change and relate to getting a secondary school diploma, and, ultimately, placement and retention in post-secondary education, advanced training or employment.
- Indicators must (1) recognize the differing goals depending on the activities/services; (2) the age of the youth; and (3) allow comparison between activities/services that include modest levels of summer job opportunities and those that invest a large proportion of resources during the summer. WIA provides for summer employment opportunities directly linked to academic and occupational learning, but intentionally did not provide a separate funding stream or differing set of indicators. In addition, the summer employment opportunities element is not intended to be a stand alone program (WIA sec. 129(c)(2)(C)). Indicators should be designed so that achieving every goal established for every youth—whether for a year-round or summer employment opportunities only—would result in a 100 percent rate.

C. Establishing a Basis for Performance Measurement

State and local officials with whom DOL consulted strongly believed that the core indicators of performance for participants should reflect completion of their activities, not necessarily completion of participation. By design, youth programs are intended to provide a continuum of services for youth resulting in attainment of several interim outcomes such as the acquisition of basic skills, work readiness, or occupational skills, award of a secondary school degree, and then, placement and retention in employment or advanced education/training. Participant goals are reflected in individual service strategies and will be different from one youth to another, depending on the needs and interests of the youth.

1. Core Indicators of Performance

Measure	Definition
Attainment of basic skills and, as appropriate, work readiness or occupational skills:	
Skill Attainment Rate (Sec 136(b)(2)(A)(ii)(I).	A rate computed by dividing the number of youth who attained a higher level of proficiency with regard to basic skills, and, as appropriate, work readiness skills or occupational skills by the number of youth receiving services or training for whom attaining basic skills, and, as appropriate, work readiness skills or occupational skills were goals to be achieved during the reporting period. Goals are based on individual assessments using widely accepted and recognized measurement/assessment techniques. (Outcomes are counted as they are achieved, not when the youth completes program participation).

Measure	Definition
Attainment of secondary school diplomas or recognized equivalents	
Diplomas or Equivalent Attainment Rate (Sec 136(b)(2)(A)(ii)(II)).	A rate computed by dividing the number of youth who attained a secondary school diploma or equivalent divided by the number of youth for whom attaining a diploma or certificate was a goal to be achieved during the reporting period. This goal will generally be appropriate for older youth 16 or 18 years old.
Placement and retention in postsecondary education or advanced training, or placement and retention in military service, employment, or qualified apprenticeships:	
Retention Rate (Sec 136(b)(2)(A)(ii)(III)).	Of those who are receiving follow-up services and for whom placement and retention is a goal, the percent with retention status at 30 days, 90 days, 180 days and one year from beginning follow-up. This overall rate would be an average of measures for all four periods.

2. Age as the Basis for Outcomes.

These younger youth reporting requirements are for participants who are 14 to 18 when enrolled in the youth program. They are appropriate as long as the youth continues to receive services identified in their individual service plans and has not attained the outcomes established for that age group. If the youth were going to continue being served by the youth program after achieving goals established prior to age 19, the youth does not need to be ''terminated'' but instead the record would indicate that the youth transferred to the age 19 to 21 youth program. This would have the same effect as a ''termination'' for performance measurement purposes but would not disrupt services to the youth. Individuals ages 19 through 21 who have completed the goals established for them prior to turning 19 and those who enter the youth program as age 19 or older should have individual service plans leading to the attainment of the goals appropriate for that age group. These outcomes would be measured in accordance with the same principles established for the adult program.

D. Why These Measures and Definitions?

Skill Attainment Rate; Attainment of secondary school diplomas and their recognized equivalents: and Placement in postsecondary education or advanced training, or placement in military service, employment, or qualified apprenticeships. All three core indicators use as their denominators the total number of youth age 14 through 18 for whom the particular outcome to be measured was a goal. This recognizes that depending on the age of the youth and their needs, individual goals will differ significantly and that the effectiveness and quality of a program should be measured by its experience in achieving goals established for its participants. It allows comparisons of programs and allows for program goals to be established without having to know the exact mix of ages of participants and relative investments in different activities. It also permits a 100 percent rate if all goals are achieved.

Note: A youth participating in WIA youth activities/services for multiple reporting periods (years), could be counted during each of the periods (years) if goals established in each are achieved.

Placement Rate and Retention Rate. Unlike the adult program where separate measures are provided for placement and retention, WIA calls for a single youth indicator that includes both placement and retention rates in one measure. The retention rate—for unsubsidized employment and further education—was chosen as the core indicator because of the difficulty in coming up with a single measure that measures placement and retention. A meaningful measure with both would be difficult because of complications coming up with a single denominator. Placement will be measured, but outside the core indicators.

Unsubsidized employment. WIA specifies that adults be measured with regard to placement in unsubsidized employment. The Youth indicator specifies only placement in employment. Unsubsidized employment is being used for consistency and because it, and not subsidized employment, will lead to self-sufficiency.

IV. Customer Satisfaction

A. Workforce Investment Act Requirements

In addition to the core measures, WIA, at sec. 136(b)(2)(B), states that ''the customer satisfaction indicator of performance shall consist of customer satisfaction of employers and participants with services received from the workforce investment activities authorized under this subtitle.'' The Statute also requires, at sec. 136(b)(3)(A)(i), that there be State adjusted levels of performance for customer satisfaction and that ''the levels of performance established * * * shall, at a minimum—

(I) Be expressed in an objective, quantifiable, and measurable form; and

(II) Show the progress of the State toward continuously improving on performance.''

The Act draws a link between the core measures and customer satisfaction by indicating that negotiations between DOL and the States must take into consideration ''* * * the extent to which the levels involved will assist the State in attaining a high level of customer satisfaction.'' WIA further suggests that ''customer satisfaction may be measured through surveys conducted after the conclusion of participation in workforce investment activities.''

B. Methods To Measure Customer Satisfaction

Customer satisfaction measures are important because they provide valuable information from customers for strategic planning and program operation. Such feedback to supervisors and staff can motivate high performance and continuous improvement. They also send a clear message to staff, management, and customers themselves that customers matter.

There are a number of different methods to collect customer satisfaction information. The simplest approach is to train staff to listen to the customers they serve and to ask questions that elicit customer needs while they are providing service. Focus groups and group interviews are another strategy. A trained manager or staff person can circulate in the resource center where people are waiting and ask questions informally to gain a better understanding of customer needs and concerns. Suggestion boxes are also a way of gathering information. As part of a comprehensive continuous improvement strategy, organizations generally use a combination of strategies since each serves a somewhat different purpose and provides different types of information.

To meet the customer satisfaction requirements of WIA, the recommended measures focus on customer satisfaction surveys. This is the only method that allows State and National aggregation of comparable, quantifiable data. The proposed measures present a general framework for developing a National customer satisfaction index for different customers.

An index is a single score that is created by combining the scores from several questions that address different dimensions of the customer experience. The customer satisfaction index will be described in more detail in the proposed measures. Essentially, the index would provide a way to capture common customer satisfaction information across programs that could be aggregated to a State and National level. The proposed measures will continue to be modified as DOL receives feedback and validation through consultation with the workforce investment system.

C. Proposed Customer Satisfaction Measurement Strategy

WIA requires measures of customer satisfaction for both participants and employers that are quantifiable, comparable across States, and that, along with the core indicators of performance, promote continuous improvement.

The basic approach for gathering and reporting customer satisfaction measures that meet these requirements will be as follows—

- There will be separate surveys of participants and employers;
- Customer satisfaction indicators will be derived from State or locally conducted surveys that include a few embedded questions that enable comparisons across States, while allowing each State to design its own instrument;
- Guidelines will be issued to the States requiring the States to validate survey methods to ensure comparability across States;
- Participants surveyed will include only registered individuals who have completed their activity/service participation (excluding follow-up services). This includes individuals who have completed services and are now employed, those who have discontinued receiving services or training, either because they have withdrawn or completed;
- Employer surveys can be based on a random sample of employers using the system; and
- Results on the embedded questions, for both employers and participants, will be compiled on the State level and reported annually.

While the Act requires reporting and comparisons across States, the primary value of effective customer feedback is to drive strategic planning and continuous improvement at the local level. DOL plans to play a strong, proactive technical assistance role that will provide States and localities with easy access to the information, instruments, tools and other resources that will enable them to use this feedback as a springboard toward high performance and quality services.

ETA will finance the design and development of customer satisfaction instruments and methodologies that meet requirements, and make these available to the States. However, States will have the option of designing their own instruments and methods as long as the few questions that enable comparisons are embedded in the State instruments and the methodologies used to collect responses on those questions are within guidelines that DOL will develop. These guidelines will include suggestions for establishing State baseline levels to be used where they do not already exist.

Attachment II—Reaching Agreement on State Adjusted Levels of Performance Under Title I of the Workforce Investment Act of 1998; A Consultation Paper

This Consultation Paper provides a framework regarding the approach and process for reaching agreement on State adjusted levels of performance under Title I of the Workforce Investment Act of 1998 to be incorporated in States' five-year strategic plans required by that Act. Comments are solicited on the overall framework and the approach. The paper does not address the additional indicators a State may identify in the State plan in accordance with Title I, because they are not subject to the agreement process.

I. Introduction

A. Broad Legal Framework

In Section 136, the Workforce Investment Act (WIA) establishes a comprehensive performance accountability system for the Statewide and local workforce investment systems. Its purpose is to assess the effectiveness of States and local areas in achieving continuous improvement of their Federally-funded workforce investment activities, in order to optimize the return on investment of Federal funds in those activities.

As part of the performance accountability system, WIA requires the Secretary and the Governor of each State to reach agreement on the respective State performance levels for the core indicators of performance and the customer satisfaction indicator. WIA requires that the State performance levels be expressed in an objective, quantifiable, and measurable form. The law also requires that the levels show the State's progress toward continuously improving in performance. The negotiated performance levels become ''State adjusted levels of performance'' and must be incorporated into the State's 5-year plan. They become the basis for sanctions for failed performance. Together with adjusted levels of performance for adult education literacy programs and performance levels for vocational education programs, they become the basis for incentive grants.

State adjusted levels of performance for the first three program years covered by a State 5-year plan are agreed to during the plan review and approval process. In reaching agreement on those levels, the Secretary and the Governor must take into account the expected levels of performance identified by the State in its 5-year plan. The Secretary and the Governor also must take into account the following three factors: (1) the extent to which the levels will help the State achieve a high level of customer satisfaction; (2) how the levels compare to those of other States, with consideration of, at least, differences in economic conditions, participant characteristics at entry into the program, and services to be provided; and (3) the extent to which the levels promote continuous improvement in performance and ensure optimal return on investment. State adjusted levels of performance for the fourth and fifth program years covered by a State 5-year plan must be agreed to before the beginning of the fourth program year.

The State plan is not required to identify expected levels of performance for those years. In reaching agreement, the Secretary and the Governor must take into account the same three factors listed above. The Governor may request revision of the agreed to performance levels if unanticipated new circumstances in the State result in significant change in any of factors for any year.

B. Guiding Principles

WIA reflects the Nation's commitment to accountability for results in government programs that is expressed in the Government Performance and Results Act. It embodies strong commitment to partnership among government entities in serving people in areas of workforce development. It promotes flexibility to provide services that provide maximum benefit to customers and high levels of customer satisfaction. These commitments are characterized by key principles that must be reflected in the process of reaching agreement on target levels for State performance measures.

1. Performance expectations for related workforce investment programs and for related reporting purposes (e.g., reporting under the Government Performance and Results Act) should be aligned to facilitate better management of overall performance.

2. State and Federal partners share the commitment to high performance and customer satisfaction, and continuous improvement in both.

3. The process and considerations in reaching agreement on State performance levels must be consistent for all the States so as to assure fairness in the derivation of performance levels.

4. States should have maximum flexibility to target populations for WIA services within the parameters of the law, and to develop and adopt innovative methods for accomplishing workforce investment objectives; this flexibility should be reflected in agreed target levels of performance.

5. States should have maximum flexibility to develop reasonable methodologies for setting performance goals in the core measurement areas and customer satisfaction.

C. Assumptions

Critical assumptions underlie the discussion of the process for reaching State/Federal agreement on State adjusted levels of performance. These assumptions relate to performance measures, incentives and sanctions, performance data and tools, and continuous improvement.

1. A paper on Performance Accountability Measurement for the Workforce Investment System is being circulated for comment. The measures described here are drawn from that paper, and so are subject to change. There are seven measurements for the core indicators of performance. Four of these apply separately to activities under three funding streams (adult, dislocated worker, and youth ages 19–22) and three apply to activities for youth ages 14–18, for a total of fifteen measures. In addition to those fifteen measures for the core indicators of performance, there are two measures for the customer satisfaction indicator. Each State plan will include one State adjusted performance level for each of the seventeen measures. The indicators and their measures, grouped by program, are:

- Adult Program (four indicators)
  - Entry into unsubsidized employment, measured by Entered Employment Rate,
  - Retention in unsubsidized employment after entry into the employment, measured by Six Month Retention Rate,
  - Earnings received in unsubsidized employment six months after entry into employment, measured by Average Earnings Change in Six Months,
  - Attainment of educational credential/occupational skills credential for adults entering employment after training, measured by Educational Credential/Occupational Skills Credential Attainment Rate (Training Services Only);
- Dislocated Workers Program

(Four indicators—same as for the Adult Program)

  - Entry into unsubsidized employment, measured by Entered Employment Rate,
  - Retention in unsubsidized employment after entry into the employment, measured by Six Month Retention Rate,
  - Earnings received in unsubsidized employment six months after entry into employment, measured by Average Earnings Change in Six Months,
  - Attainment of educational credential/occupational skills credential for adults entering employment after training, measured by Educational Credential/Occupational Skills Credential Attainment Rate (Training Services Only);
- Youth Ages 19–22 Program

(four indicators—same as for the Adult Program, with a variation in the credentials indicator)

  - Entry into unsubsidized employment, measured by Entered Employment Rate,
  - Retention in unsubsidized employment after entry into the employment, measured by Six Month Retention Rate,
  - Earnings received in unsubsidized employment six months after entry into employment, measured by Average Earnings Change in Six Months,
  - Attainment of educational credential/occupational skills credential for youth ages 19–22 entering post-secondary education, advanced training, or employment after training, measured by Educational Credential/Occupational Skills Credential Attainment Rate (Training Services Only),

Youth Ages 14–18 Program

(three indicators)

  - Attainment of basic skills and, as appropriate, work readiness or occupational skills, measured by Skill Attainment Rate,
  - Attainment of secondary school diplomas and their recognized equivalents, measured by Diplomas and Equivalents Attainment Rate,
  - Placement and retention in postsecondary education or advanced training, or placement and retention in military service, employment, or qualified apprenticeships, measured by Placement Rate;

Customer Satisfaction for Combined Programs

(two indicators)

  - Participant satisfaction, measured by an index derived from several questions on customer satisfaction surveys,
  - Employer satisfaction, measured by an index derived from several questions on customer satisfaction surveys.

2. The Department of Labor expects that negotiations will lead to high State adjusted levels of performance to encourage high performance.

3. Incentives will be awarded and sanctions will apply based on performance against State adjusted levels of performance beginning in the first year of WIA implementation. Only States that exceed their agreed to levels will be eligible for incentive awards. Sanctions based on first year performance will not include monetary penalties.

4. The Department of Labor will establish a single estimate of National average performance for each performance measure. Initially, because only limited historical outcome data are available to develop information on likely outcomes for WIA core

performance indicators, the information will be subject to serious qualifications. For some indicators, rough estimates of the distribution of performance among States and simple adjustment models will be developed as tools for reaching agreement on State adjusted levels of performance. For other core performance indicators and the customer satisfaction indicator, the available data will not be sufficient at the outset to develop such tools. The Department expects that future negotiations will be informed by discussions with and the actual performance of the early implementing States.

5. A commitment to continuous improvement is not simply an agreement to raise the State adjusted levels of performance for successive years and incrementally improve performance numbers. Continuous improvement is the process of building dynamic, high achieving systems within every organization through the ongoing systematic improvement of products, programs, services, and processes by both small increments and major breakthroughs. Continuous improvement encompasses a commitment to a systematic approach to high performance. Continuous improvement is driven by finding opportunities to do better, as well as by solving problems that need immediate correction. It becomes a regular part of daily work, and provides a method of eliminating problems at their source. Performance measures and customer satisfaction are integrated into a continuous improvement approach to focus on where to concentrate resources, or redesign programs or sequences of services in order to achieve better results.

II. Principal Stages of Agreement Process

There are three principal stages of the process for reaching agreement on State adjusted levels of performance in State five-year plans. These stages are defined in terms of plan submittal and approval. The first stage precedes submittal of the State plan and includes the Department's provision of information, the State's planning and development of an ''expected level of performance'' for each of the prescribed indicators of performance and customer satisfaction, and preliminary State/Federal discussions. The second stage begins with the State's submittal of its plan including the expected levels of performance that serve as the starting point for negotiations between the State and Federal partners, and ends when the State adjusted levels of performance are agreed to by the State Governor and the Secretary of Labor and incorporated into the State plan. The third stage follows approval of the plan with the agreed levels and encompasses possible modification of the plan to revise the State adjusted levels of performance.

A. Stage One: Federal and State Information and Preliminary Discussion

Before any meaningful activity can be accomplished relative to planning or setting State performance goals, the State and Federal partners will need an understanding about the process and its relationship to other processes in the performance accountability system, e.g., reporting, incentive and sanction policies, GPRA goals, etc. Ideally, this information would become available before a State engages in its strategic planning process or sets its ''expected levels of performance'' and must be available before the negotiation process begins. Both the State and the Federal partners must gather and assess information prior to States' submittal of their plans.

1. Federal Information

The Department expects to release information in the following areas at the earliest possible time. Each of these items will be covered in papers to be developed and issued for comment.

- Specific measures will be identified for the core performance and customer satisfaction indicators. Definitions will be provided for those measures, and will include the scope of the measures, e.g., are they only Title I, all WIA referenced activities, etc.
- Information will be provided about performance measurement tools under development, such as estimates of the distribution of performance among States and simple adjustment models. The information will include sources of data, the expected usefulness of information to be developed, and for which measures, if any, there will be State-specific estimates or adjustment models.
- The process for negotiating the measures will be established and communicated to the system. This will include expectations for how and when the discussions will occur as well as the kinds of information that must be available from the State to facilitate the discussions.
- Guidance will be issued about the levels that will be considered acceptable when negotiating adjusted performance levels, including specific information on:

—Policies that set criteria for evaluating expected levels of performance;
—Policies for award of incentives and related concepts for meeting and exceeding WIA Title I performance goals (note that this does not include the overall policy for consideration of performance WIA Title II and Carl D. Perkins Act programs); and
—Policies defining sanctions and related definitions for failure to meet standards.

- Guidance will be issued on determining the impact of adjusted levels of performance on attaining high levels of customer satisfaction.
- Policy will be set to describe the consideration of continuous improvement in the goal setting process.
- Specific data and tools including models, if available, will be provided for comparing the adjusted levels of performance among States. Data and tools will continue to be released as they are developed.

2. State Information

WIA envisions an accountability process that takes into consideration unique State and local requirements and circumstances. As States engage in the planning process and develop the expected levels of performance they will identify in their State plans, they will gather information that will be useful in the subsequent negotiation process. States will obtain preliminary information about the economy, anticipate characteristics of the population to be served, and set strategies for determining service mix, since these must be considered in setting performance levels. States will explore pertinent data sources related to sequenced services and one-stop service systems and examine their utility in establishing a baseline for the negotiations process. States will develop information gleaned from an environmental scan to determine the progress local areas have made in developing a service delivery system as required in WIA. States will consider the strength of State/local partnerships among agencies and organizations that will support the system and strategies under consideration to strengthen and streamline the delivery system. States are encouraged to take into account, in developing their expected levels of performance, the results of the negotiation of local performance levels.

3. Preliminary Discussion

The Department recognizes, with the States, that time is short for development of State plans, including performance levels, particularly for those States that expect to implement WIA in July 1999. The Department appreciates and continues to encourage

State and local involvement as WIA policies and procedures are developed. In this spirit of cooperation, preliminary discussion of performance management, including the development of performance levels, is welcomed. States are encouraged to contact their Regional Offices for discussion and technical assistance prior to plan submittal. The benefits of early discussion could include:

- Ensuring understanding of guidance, policy, data, and technical material provided by the Department prior to plan submittal;
- Benefitting from the experience of regional staff and other States;
- Tailoring the provision of technical assistance on performance accountability to meet local and regional planning needs;
- Developing a mutual understanding of State and Federal expectations and assumptions prior to plan submittal, to ensure development of a shared set of goals;
- Allowing maximum time (in advance of the up-to-ninety-days plan review period) for States and local areas to complete necessary planning and consultation on performance levels; and
- Smoothing the agreement process.

B. Stage Two: Formal Discussion and Agreement

A State's submittal of its five-year plan to the Secretary of Labor triggers the up-to-ninety-days review period during which the Federal and State partners are to reach agreement on the State adjusted levels of performance for the core and customer satisfaction indicators. The agreed to levels will be incorporated into the plan prior to its approval. A State's plan will not be approved if agreement has not been reached. It is expected that the negotiations will take place between the States and the Department's Regional Offices, consistent with guidelines to be issued by the Department to the workforce development system.

The State plan will include the State's expected level of performance for each core indicator and customer satisfaction indicator. The plan will also include an explanation of the derivation of each expected level. In the formal negotiations, States should be prepared to provide support for any data and data analysis used in arriving at the expected levels of performance. States should also be prepared to discuss any environmental or strategic issues that are expected to influence performance levels.

In addition to the expected levels of performance identified in the State plan for the first three years covered by the plan, WIA specifies three factors that the Governor and the Secretary must take into consideration in the agreement process. The first is the extent to which the State adjusted levels of performance will help the State achieve a high level of customer satisfaction. The second is how those levels compare to the adjusted levels of other States, considering differences in economic conditions, characteristics of participants upon entry into WIA programs, and services to be provided. The third factor is the extent to which the adjusted levels promote continuous improvement in performance and ensure optimal return on investment. As mentioned earlier, the Department expects to issue guidelines for consideration of all of these factors, to ensure consistency and fairness in the agreement process. The performance levels, representing the anticipated results of the comprehensive workforce development plan, will be considered in the context of the entire plan. Particularly because of the anticipated limitations of available data at the outset of WIA implementation, the negotiation process itself is expected to be a learning experience for the State and Federal partners.

C. Stage Three: Modifications, and Years Four and Five

WIA specifies that Governors may request revisions to State adjusted levels of performance for any of the five program years included in a State plan, based on unanticipated circumstances in their respective States that result in significant changes in factors including economic conditions, characteristics of participants, and services provided. WIA does not prohibit consideration of other factors. The Secretary will issue guidelines establishing objective criteria and methods for making revisions requested by Governors. These guidelines also will specify the conditions under which a State is required to revise the agreed to levels of performance. The revision process will be addressed in a separate paper which is expected to be issued for comment in late April 1999.

Because of the transitional nature of the program for the first three program years and the lack of data from which predictions of WIA performance can be derived for each State, there must be allowance for changes in expected performance beyond the circumstances specified in WIA. Allowance for changes in performance expectations is particularly important because a State's performance measured against its State adjusted levels of performance will affect its eligibility for incentive grants and its susceptibility to sanctions. As the body of WIA experience grows—over time in individual States and as more States implement WIA—more information will become available to permit development of more useful performance management tools, including National figures, State-specific information, distributions of performance data across States, and adjustment models. The effects of continuous improvement approaches will be better understood and more predictable as their application is tested. Because of these anticipated changes, it is expected that State adjusted performance levels included at the beginning of a State's five-year plan will be able to be refined as time passes.

Federal guidance will delineate circumstances in which the State adjusted levels of performance must or may be revised—upward or downward—for individual States or for all States. Some possibilities beyond those identified in the law are listed here.

- Performance levels are set for all States based on the pre-WIA wage record experience of a few States, and experience shows that the predictions were not valid.
- The operation of the one-stop system in a State varies significantly from that discussed during performance negotiations.
- Changes in State law, Statewide vision, or strategies have a significant impact on performance outcomes.
- Changes in Federal law or policy have a significant impact on performance outcomes.

WIA requires that agreement be reached on State adjusted levels of performance for the fourth and fifth program years covered by a five-year plan prior to the beginning of the fourth year. The State does not submit expected levels of performance for those years. The law seems to contemplate that experience under WIA in the first three years will provide a sufficient basis for setting levels for subsequent performance.

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federal register

Wednesday
March 24, 1999

Part IV

Department of Agriculture

Cooperative State Research, Education, and Extension Service

7 CFR Part 3400

Special Research Grants Programs; Proposed Rule

DEPARTMENT OF AGRICULTURE

Cooperative State Research, Education, and Extension Service

7 CFR Part 3400

Special Research Grants Program

AGENCY: Cooperative State Research, Education, and Extension Service, USDA

ACTION: Proposed Rule

SUMMARY: This proposed rule will amend the Special Research Grants Program Administrative Regulations to replace references to section 2 of the Act of August 4, 1965, with references to the Competitive, Special, and Facilities Research Grant Act (CSFRGA), to apply to competitive and noncompetitive grants, to include extension and educational activities under the regulation, to shorten the maximum potential grant award period, to require grantees to arrange for scientific peer review of their proposed research activities and merit review of their proposed extension and education activities prior to award, in accordance with subsection (c)(5) of CSFRGA, as amended by section 212 of the Agricultural Research, Extension, and Education Reform Act of 1998 (7 U.S.C. 450i(c)(5)), and to require an annual report of the results of the research, extension, or education activity and the merit of the results.

DATES: Written comments must be received on or before April 23, 1999.

ADDRESSES: Submit written comments concerning this proposed rule to Dr. Sally Rockey, Deputy Administrator, Competitive Research Grants and Awards Management, USDA Cooperative State Research, Education, and Extension Service, Mail Stop 2240, 1400 Independence Avenue, SW, Washington, DC 20250-2240; telephone, (202) 401–1761; e-mail, srockey@reeusda.gov.

FOR FURTHER INFORMATION CONTACT: Dr. Sally Rockey, Deputy Administrator, at the above address.

SUPPLEMENTARY INFORMATION: On June 23, 1998, President Clinton signed into law the Agricultural Research, Extension, and Education Reform Act of 1998 (AREERA) (Pub. L. No. 105–185). CSFRGA (formerly section 2 of the Act of August 4, 1965, Pub. L. No. 89–106, as retitled by Section 401(a) of the Food, Agriculture, Conservation, and Trade Act Amendments of 1991 (FACT Act Amendments), Pub. L. No. 102–237), as amended by section 212(2) of AREERA, states in subsection (c)(5) that the Secretary shall make a grant under this authority for a research activity only if the activity has undergone scientific peer review arranged by the grantee in accordance with regulations promulgated by the Secretary. Likewise, subsection (c)(5) of CSFRGA, as amended by section 212(2) of AREERA, states that the Secretary shall make a grant under this authority for an extension or education activity only if the activity has undergone merit review arranged by the grantee in accordance with regulations promulgated by the Secretary. This proposed rule is intended to comply with the Secretary's duty to promulgate such regulations.

The proposed rule expands the scope of these regulations to apply to all subsection (c) awards, including both competitive and noncompetitive awards made under this authority. The proposed rule also revises these regulations to address extension and education activities in addition to research activities. CSREES determined that expanding the scope of the existing regulations was preferable compared to the alternative of having two sets of administrative regulations to govern the same program. Having only one set of administrative regulations will result in less confusion of interested parties. Making these regulations applicable to all subsection (c) awards, including competitive and noncompetitive grants, is necessary because the statutory review requirements apply to all grants made under this authority. The proposed rule clearly delineates in revised § 3400.1 which provisions will apply respectively to competitive and noncompetitive awards. Subparts A and B, other than § 3400.1, will continue to apply only to grants awarded under subsection (c)(1)(A). Subpart C, implementing the review requirements, will apply to all grants awarded under subsection (c), including both competitive and noncompetitive awards.

Subpart C of the proposed rule requires that applicants have research proposals undergo peer review and extension and education proposals undergo merit review. The program authority emphasizes the regional or national nature of the funded projects. Consistent with that emphasis, the review must assess the technical quality and relevance of the proposed work to regional or national goals. The proposed regulations also require that any review be credible and independent. By specifying only basic parameters and not detailed procedures for review, CSREES aims to provide applicants with maximum flexibility in determining the timing and use of resources committed for such review. CSREES, however, has reserved the right in the proposed regulations to specify the timing of submission of the notice of completion of review. The agency does not anticipate the need to set the timing of this notice, but intends only to preserve this option should CSREES determine that implementation of this regulation required such action. Flexibility within the review requirements allows applicants to tailor the nature and character of the review more appropriately to the size, scope, and duration of the proposed project. CSREES considers such latitude necessary because of the broad range of research, education, and extension projects supported under this authority.

CSREES is proposing a broad definition of ''scientific peer review.'' For purposes of this grant program, CSREES is implementing ''peer'' to mean ''experts with the scientific knowledge and technical skills to conduct the proposed research work.'' Again, this provision aims to allow applicants flexibility in determining who performs the review while simultaneously imposing the minimum standards that CSREES believes are necessary to ensure the ability of such persons to review the technical components of a proposed activity. CSREES also lists certain persons, such as collaborators, who should not perform the review because of a direct conflict-of-interest. CSREES includes similar requirements for merit reviewers based on the same rationale.

Applicants must provide notice acting as certification prior to an award by CSREES that the review has been completed. Having applicants submit only a notice of compliance, and not the actual review documentation or results, aims to minimize the administrative burden on the applicants. The proposed regulations, however, do require that the applicant retain the review documentation and, consistent with agency assistance regulations, such documentation may be subject to agency inspection.

CSREES has elected not to require peer or merit review for each renewal or extension of a proposed project either through a renewal grant, continuation grant, or supplemental grant except under limited circumstances. These circumstances are: (1) if the funded activity has changed significantly from the original proposal; (2) if other scientific discoveries have affected the project; and (3) if the need for the activity has changed. CSREES will make the final determinations as to whether any of these three situations exists. Under any of these three circumstances, a new review will be required before

CSREES will make a subsequent grant award. Because any grant awarded under this program statutorily cannot extend beyond three years, a new review automatically is required every three years before CSREES can make a new grant award.

Subpart D of the proposed rule requires that recipients submit annual reports describing the results of the research, extension, or education activity. The agency currently requires that recipients submit annual and final performance reports as part of the terms and conditions of each award. The agency believes that subpart D meets the reporting requirements contained in section 212 of AREERA.

This proposed rule also makes technical amendments to Part 3400 to change references to the Act of August 4, 1965, to the Competitive, Special, and Facilities Research Grant Act as retitled by Section 401(a) of the FACT Act Amendments. The proposed rule also changes the maximum potential award period for Special Grants from five (5) years to three (3) years to conform with the amendments in section 212 of AREERA.

This proposed rule has been reviewed under Executive Order No. 12866, and it has been determined that it is not a ''significant regulatory action'' rule because it will not have an annual effect on the economy of $100 million or more or adversely and materially affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. This proposed rule will not create any serious inconsistencies or otherwise interfere with any actions taken or planned by another agency. It will not materially alter the budgetary impact of entitlements, grants, user fees or loan programs and does not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or principles set forth in Executive Order No. 12866. In addition, the Department certifies that the rule will not have a significant impact on a substantial number of small entities as defined in the Regulatory Flexibility Act, Pub. L. 96–354 (5 U.S.C. 601–612).

This proposed rule has been reviewed under Executive Order No. 12988, Civil Justice Reform. No retroactive effect is to be given to this proposed rule. This proposed rule does not require administrative proceedings before parties may file suit in court.

This proposed rule does not significantly affect the environment. Therefore, an environmental impact statement is not required under the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*).

Under the provisions of the Paperwork Reduction Act of 1995, as amended, 44 U.S.C. chapter 35, and Office of Management and Budget (OMB) regulations at 5 CFR Part 1320, the collection of information requirements for research activities contained in this rule have been approved under OMB Document Nos. 0524–0022 and 0524–0033. When appropriations are made available for extension and education activities under this program, CSREES will fully comply with the Paperwork Reduction Act and submit a revision to the collection of information requirements to include these activities. Comments from potential applicants on this proposed collection of information may be submitted to CSREES–USDA; Office of Extramural Programs; Policy and Program Liaison Staff; Mail Stop 2299; 1400 Independence Avenue, S.W.; Washington, D.C. 20250–2299 by May 24, 1999, or to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20502. Reference should be made to the volume, page, and date of this **Federal Register** publication.

List of Subjects in 7 CFR Part 3400

Grants programs—agriculture, Grants administration.

For the reasons set forth above, CSREES proposes to amend Part 3400 of Chapter XXXIV of Title 7 of the Code of Federal Regulations as follows:

PART 3400—SPECIAL RESEARCH GRANTS PROGRAM

1. The authority citation for Part 3400 is revised to read as follows:

Authority: 7 U.S.C. 450i(c).

2. Revise § 3400.1 to read as follows:

§ 3400.1 Applicability of regulations

(a) The regulations of this part apply to special research grants awarded under the authority of subsection (c) of the Competitive, Special, and Facilities Research Grant Act, as amended (7 U.S.C. 450i(c)), to facilitate or expand promising breakthroughs in areas of the food and agricultural sciences of importance to the United States. Subparts A and B, excepting this section, apply only to special research grants awarded under subsection (c)(1)(A) of the Act. Subpart C, Peer and Merit Review Arranged by Grantees, and Subpart D, Annual Reports, applies to all grants awarded under subsection (c) of the Act.

(b) Each year the Administrator of CSREES shall determine and announce through publication of a Notice in such publications as the **Federal Register**, professional trade journals, agency or program handbooks, the Catalog of Federal Domestic Assistance, or any other appropriate means, research program areas for which proposals will be solicited competitively, to the extent that funds are available.

(c) The regulations of this part do not apply to research, extension or education grants awarded by the Department of Agriculture under any other authority.

3. Revise § 3400.7(c) by inserting in lieu of the words ''five (5) years'' the words ''three (3) years'' so that the paragraph is revised to read as follows:

§ 3400.7 Use of funds; changes.

(c) *Changes in project period.* The project period determined pursuant to § 3400.5(b) may be extended by the Administrator without additional financial support for such additional period(s) as the Administrator determines may be necessary to complete, or fulfill the purposes of an approved project. Any extension, when combined with the originally approved or amended project period shall not exceed three (3) years (the limitation established by statute) and shall be further conditioned upon prior request by the grantee and approval in writing by the Department, unless prescribed otherwise in the terms and conditions of a grant award.

* * * * *

4. Subpart C of Part 3400 is added to read as follows:

Subpart C—Peer and Merit Review Arranged by Grantees

3400.20 Grantee review prior to award.
3400.21 Scientific peer review for research activities.
3400.22 Merit review for education and extension activities.

Subpart C—Peer and Merit Review Arranged by Grantees

§ 3400.20 Grantee review prior to award.

(a) *Review requirement.* Prior to the award of a standard or continuation grant by CSREES, any proposed project shall have undergone a review arranged by the grantee as specified in this subpart. For research projects, such review must be a scientific peer review conducted in accordance with § 3400.21. For education and extension projects, such review must be a merit review conducted in accordance with § 3400.22.

(b) *Credible and independent.* Review arranged by the grantee must provide for

a credible and independent assessment of the proposed project. A credible review is one that provides an appraisal of technical quality and relevance sufficient for an organizational representative to make an informed judgment as to whether the proposal is appropriate for submission for Federal support. To provide for an independent review, such review may include USDA employees, but should not be conducted solely by USDA employees.

(c) *Notice of completion and retention of records.* A notice of completion of review shall be conveyed in writing to CSREES either as part of the submitted proposal or prior to the issuance of an award, at the option of CSREES. The written notice constitutes certification by the applicant that a review in compliance with these regulations has occurred. Applicants are not required to submit results of the review to CSREES; however, proper documentation of the review process and results should be retained by the applicant.

(d) *Renewal and supplemental grants.* Review by the grantee is not automatically required for renewal or supplemental grants as defined in § 3400.6. A subsequent grant award will require a new review if, according to CSREES, either the funded project has changed significantly, other scientific discoveries have affected the project, or the need for the project has changed. Note that a new review is necessary when applying for another standard or continuation grant after expiration of the grant term.

§ 3400.21 Scientific peer review for research activities.

Scientific peer review is an evaluation of a proposed project for technical quality and relevance to regional or national goals performed by experts with the scientific knowledge and technical skills to conduct the proposed research work. Peer reviewers may be selected from an applicant organization or from outside the organization, but shall not include principal or co-principal investigators, collaborators or others involved in the preparation of the application under review.

§ 3400.22 Merit review for education and extension activities.

Merit review is an evaluation of a proposed project or elements of a proposed program whereby the technical quality and relevance to regional or national goals are assessed. The merit review shall be performed by peers and other individuals with expertise appropriate to evaluate the proposed project. Merit reviewers may not include principals, collaborators or others involved in the preparation of the application under review.

5. Subpart D of Part 3400 is added to read as follows:

Subpart D—Annual Reports

§ 3400.23 Annual reports.

(a) *Reporting requirement.* Annually, within 30 days of the anniversary date of each award, the recipient shall submit a report describing the results of the research, extension, or education activity and the merit of the results.

(b) *Report type and content.* Unless otherwise stipulated, grant recipients will have met the reporting requirement under this subpart by complying with the reporting requirements as set forth in the terms and conditions of the grant at the time of award.

Done at Washington, D.C., on this 19th day of March, 1999.

I. Miley Gonzalez,

Under Secretary, Research, Education and Economics.

[FR Doc. 99–7256 Filed 3–23–99; 8:45 am]

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federal register

Wednesday
March 24, 1999

Part V

The President

Proclamation 7174—National Poison Prevention Week, 1999

Federal Register
Vol. 64, No. 56
Wednesday, March 24, 1999

Presidential Documents

Title 3—

The President

Proclamation 7174 of March 19, 1999

National Poison Prevention Week, 1999

By the President of the United States of America

A Proclamation

During National Poison Prevention Week, Americans focus on the progress we have made in reducing the number of accidental poisonings that occur each year and reaffirm our commitment to preventing further tragedies.

We can be heartened by the progress we have made. In 1962, when President Kennedy proclaimed the first National Poison Prevention Week, 450 young people died due to poisoning. That number has fallen dramatically. There are many who share the credit for this growing success story: responsible parents and caregivers, who keep medicines, cosmetics, household cleaners, insecticides, and other poisonous substances out of the reach of children; the U.S. Consumer Product Safety Commission, which requires the use of child-resistant packaging on potentially dangerous materials; the Poison Prevention Week Council, which annually distributes poison prevention information to pharmacies, public health departments, and safety organizations; and our Nation's poison control centers, which provide lifesaving emergency first aid information. Working together, these dedicated individuals and organizations have saved hundreds of lives each year.

But we cannot relax our efforts, because each life we lose to accidental poisoning is one too many. We must all do our part to protect our Nation's children by selecting and properly using child-resistant packaging, keeping poisonous substances accurately labeled and locked away from children, carefully reading and following all directions and caution labels on packages, and keeping the number of a poison control center close to the telephone. If a poisoning incident does occur, we need to respond quickly by contacting the poison control center, relaying the appropriate information—such as the age and weight of the poisoning victim and the type and amount of substance he or she has ingested—and heeding instructions. These simple safety measures can mean the difference between life and death.

To encourage the American people to learn more about the dangers of accidental poisonings and to take responsible preventive measures, the Congress, by joint resolution approved September 26, 1961 (75 Stat. 681), has authorized and requested the President to issue a proclamation designating the third week of March of each year as ''National Poison Prevention Week.''

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim the week beginning March 21, 1999, as National Poison Prevention Week. I call upon all Americans to observe this week by participating in appropriate ceremonies and activities and by learning how to protect our children from poisons.

IN WITNESS WHEREOF, I have hereunto set my hand this nineteenth day of March, in the year of our Lord nineteen hundred and ninety-nine, and of the Independence of the United States of America the two hundred and twenty-third.

William J. Clinton

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Federal Register

Vol. 64, No. 56

Wednesday, March 24, 1999

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Presidential Documents	
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The United States Government Manual	**523–5227**
Other Services	
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FEDERAL REGISTER PAGES AND DATES, MARCH

9905–10100 1
10101–10204 2
10205–10386 3
10387–10554 4
10555–10918 5
10919–11372 8
11373–11754 9
11755–12078 10
12079–12238 11
12239–12742 12
12743–12880 15
12881–13062 16
13063–13310 17
13311–13496 18
13497–13662 19
13663–13880 22
13881–14096 23
14097–14354 24

CFR PARTS AFFECTED DURING MARCH

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

100 12881

Proclamations:

7168 10101
7169 10379
7170 10383
7171 10385
7172 11373
7173 12879
7174 14353

Executive Orders:

12170 (See Notice of March 10, 1999) 12239
12852 (Amended by EO 13114) 10099
12957 (See Notice of March 10, 1999) 12239
12959 (See Notice of March 10, 1999) 12239
13059 (See Notice of March 10, 1999) 12239
13114 10099

Administrative Orders:

Notice of March 10, 1999 12239

Presidential Determinations:

No. 99–15 of February 26, 1999 11319
No. 99–16 of March 4, 1999 13495

5 CFR

532 ..... 9905, 9906
2635 13063

Proposed Rules:

1620 13924
1650 13725

7 CFR

3 11755
246 13311
360 12881
361 12881
782 12884
989 10919
1381 11755
1434 10923
1439 13497
1469 10929

Proposed Rules:

301 11392
915 13123
916 11346
917 11346
1065 13125
1301 12769
1823 10235
1956 10235
3400 14348

8 CFR

3 ..... 13663, 13881
103 13881
208 13881
235 13881
238 13881
240 13881
241 13881
253 13881
274a 11533
507 13881

9 CFR

52 13064

Proposed Rules:

1 10400
3 10400
71 13726
80 13726
112 13365
113 ..... 10400, 14156
391 10402

10 CFR

708 12862

Proposed Rules:

21 12117
50 12117
54 12117
63 10405
70 13368
707 11819

11 CFR

Proposed Rules:

2 10405
4 10405
5 10405

12 CFR

3 10194
208 10194
225 10201
325 10194
567 10194
960 12079

Proposed Rules:

602 10954

13 CFR

123 13667

14 CFR

21 13501
25 10740
39 ..... 9906, 9908, 9910, 9911, 9912, 10205, 10208, 10209, 10211, 10213, 10216, 10555, 10557, 10560, 10935, 11375, 11533, 11757, 11759, 11761, 11764, 12241, 12242, 12244, 12247, 12249, 12252, 12743, 13325, 13326, 13328, 13330, 13502, 13504, 13667, 13669, 13882, 13884, 13886, 13889,

13890, 13892, 14097
71 .....10387, 10562, 10563, 10740, 10937, 10938, 10939, 10940, 12084, 12254, 12255, 13333, 13504, 13671, 13672, 14306
73 .....12743, 13334, 13506
97 ....9912, 9914, 13334, 13336
204.....12084
257.....12838
258.....12854
399.....12838
Proposed Rules:
39 .....9939, 10237, 10578, 10959, 11401, 12770, 12772, 13530, 13732, 13932, 13934, 13936
71 .....9940, 10238, 10239, 10241, 10242, 10243, 10410, 10411, 10962, 11533, 11819, 11820, 12126, 12404, 13938
129.....13880

15 CFR

734.....13338
740.....13338
742.....13338
752.....13338
772.....13338
774 .....10852, 12744, 13338
806.....10387
902.....14052

16 CFR

Proposed Rules:
Ch. I 14156
241.....13368
256.....13369
1213.....10245, 14158
1500.....10245, 14158
1513.....10245, 14158
1615.....10963, 13126
1616.....10963, 13126
1630.....13132
1631.....13132
1632.....13137

17 CFR

202.....13065
228.....11103
229.....11103
230 .....11090, 11095, 11103
239.....11103, 11118
240.....10564, 13065
242.....13065
249.....13065
Proposed Rules:
1.....14159
30.....14159
210.....10579
228.....10579
230.....12908
232.....12908
239.....11118, 12908
240 .....9948, 10579, 11124, 12127, 12908
270.....12908
274.....12908

19 CFR

Ch. I 13673
133.....11376
Proposed Rules:
4.....13370
24.....13141
146.....13142

20 CFR

10.....12684
404.....10103, 13677
416.....13677

21 CFR

5.....14098
26.....11376
50.....10942
101.....12886, 12887
177.....10943
178.....13506
201.....13066, 13254
216.....10944
330.....13254
331.....13254
341.....13254
346.....13254
355.....13254
358.....13254
369.....13254
520 .....10103, 10389, 13068, 13340, 13341, 13508, 13678
522.....13508, 13509
556 .....10103, 13068, 13341, 13679
558 .....13068, 13069, 13341, 13342, 13679
701.....13254
806.....14098
812.....10942
874.....10947
Proposed Rules:
101.....14178
864.....12774
866.....12774
868.....12774
870.....12774
872.....12774
874.....12774
876.....12774
878.....12774
884.....12774
886.....12774
888.....12774
1010.....14180
1040.....14180

22 CFR

41.....13510
121.....13679
124.....13679
171.....10949

24 CFR

5.....13056
887.....13056
941.....13510
982.....13056
984.....13056
3500.....10080
Proposed Rules:
Ch. IX 13531, 13533
990.....12920

25 CFR

031.....13894
039.....13894
111.....13894
112.....13894
115.....13894
140.....13894
151.....13894
152.....13894
160.....13894
162.....13894
226.....13894
256.....13894
273.....13894
275.....13894
276.....13894

26 CFR

1.....10218, 11378
602.....10218
Proposed Rules:
1 .....10262, 13939, 13940, 14306
20.....10964, 13940
025.....13940
031.....13940
040.....13940

27 CFR

9.....13511
13.....10949
24.....13682

28 CFR

79.....13686
Proposed Rules:
25.....10262
302.....11821
549.....10095

29 CFR

1910.....13700, 13897
4044.....12745

30 CFR

256.....13343
914.....12890
934.....12896
Proposed Rules:
57.....14200
204.....13734
206.....12267
250.....13535
938.....12269

32 CFR

199.....11765, 13912

33 CFR

62.....10104
100.....13913, 13914
117.....10104, 13514
165 .....11771, 12746, 13915, 14306
320.....11708
326.....11708
331.....11708
Proposed Rules:
117.....12795, 12797
155.....13734
167.....12139

34 CFR

300.....12406
303.....12406
648.....13486
694.....10184
Proposed Rules:
303.....12674

36 CFR

61.....11736
Proposed Rules:
1190.....13752
1091.....13752

37 CFR

1.....12900
201.....12902
202.....12902

39 CFR

20.....9915, 10219
111.....10950, 12072
Proposed Rules:
111.....11402

40 CFR

52 .....9916, 11773, 11775, 12002, 12005, 12015, 12019, 12085, 12087, 12256, 12257, 12749, 12751, 12759, 13070, 13343, 13346, 13348, 13351, 13514, 13916
58.....10389
60.....10105, 11536
62.....13075, 13517
63.....11536, 12762
80.....10366
81 .....11775, 12002, 12005, 12257, 13146
82.....10374
93.....13476
136.....10391, 13053
180 .....10227, 10233, 10567, 11782, 11789, 11792, 11799, 13078, 13086, 13088, 13094, 13097, 13103, 13106, 14098, 14099, 14101, 14104, 14106
271.....10111
300.....11801
302.....13113
355.....13113
439.....10391, 13053
Proposed Rules:
Ch. 1 10066
52 ...9951, 9952, 10118, 10265, 10342, 11822, 12025, 12141, 12798, 12799, 13143, 13146, 13372, 13375, 13378, 13379, 13382, 13538, 13753
60.....10119, 11555
62.....13539
63.....11555, 11560
81 .....11822, 12025, 13383, 13384
94.....10596
97.....10118
136.....10596
271.....10121, 14201
372.....9957, 10597
435.....10266

41 CFR

101–49.....13700

42 CFR

Proposed Rules:
409.....12277
410.....12277
411.....12277
412.....12277
413.....12277
416.....12278
419.....12277
447.....10412
457.....10412
488.....12278, 13354
489.....12277

498 12277
1003 12277

43 CFR

4 13362
Proposed Rules:
428 12141
3400 12142
3420 12142
3800 9960

44 CFR

61 13115
64 9919
65 ....11378, 11380, 11382, 11384
67 ....11386, 11388
Proposed Rules:
67 ....11403, 11409
77 10181
80 10181
81 10181
82 10181
83 10181
152 10181
207 10181
220 10181
221 10181
222 10181
301 10181
303 10181
306 10181
308 10181
320 10181
324 10181
325 10181
328 10181
333 10181
336 10181

45 CFR

60 9921
302 11802
303 ....11802, 11810
304 11802
1207 14113
1208 14123
1209 14133
2551 14113
2552 14123
2553 14133
Proposed Rules:
92 10412
95 10412
1224 10872
1302 14202
2508 10872

46 CFR

502 9922
510 11156
514 11186
515 11156
520 11218
530 11186
535 11236
545 9922
565 10395
571 9922
572 11236
583 11156

47 CFR

41 13916
51 14141
64 ....13701, 14141
73 ....9923, 12767, 12902, 12903, 13719, 13720, 13721, 13722, 13729
90 10395
Proposed Rules:
1 9960
2 10266
51 14203
73 ....12922, 12923, 12924, 13756, 13757
95 10266

48 CFR

Ch. 1 ....10530, 10552
1 ....10531, 10548
4 10531
5 10535
8 10535
11 10538
12 ....10531, 10535
13 10538
14 10531
15 10544
16 10538
19 10535
22 10545
25 10548
26 10531
27 10531
31 10547
32 ....10531, 10548
41 10531
52 ....10531, 10535, 10538, 10545, 10548
53 ....10548, 10913, 12862
913 12862
922 12862
915 12220
970 ....12220, 12862
1806 10571
1815 10573
1819 10571
1822 14148
1842 10573
1852 ....10571, 10573
Proposed Rules:
970 14206

49 CFR

171 ....9923, 10742
172 10742
173 10742
174 10742
175 10742
176 10742
177 10742
178 10742
180 10742
531 12090
571 ....10786, 11724
575 11724
596 10786
1000–1199 10234
1420 13916
Proposed Rules:
171 ....13856, 13943
173 13856
177 13856
178 13856
180 13856
192 12147
350 11414
571 ....9961, 10604, 13947, 14207
572 10965
585 13947
587 13947
591 13757
595 13947
1420 13948

50 CFR

17 13116
25 14149
36 ....14149, 14151
216 9925
217 14052
220 14052
221 14052
222 14052
223 ....14052, 14308
224 ....14052, 14308
225 14052
226 14052
227 14052
285 10576
300 13519
600 9932
622 ....13120, 13363, 13528
630 12903
648 14052
660 ....9932, 12092
678 14154
679 ....9937, 10397, 10398, 10952, 11390, 12093, 12094, 12103, 12265, 12767, 12768, 13121, 13122, 13723, 14052, 14155
697 14052
Proposed Rules:
216 9965
17 ....12924, 14209
223 14329
224 14329
285 10438
600 ....10438, 12925
622 ....10612, 10613
630 10438
635 10438
644 10438
648 ....11431, 13392, 13952
660 ....10439, 12279, 14211
678 10438

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT MARCH 24, 1999

ENVIRONMENTAL PROTECTION AGENCY

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
- Azoxystrobin; published 3-24-99
- Cinnamaldehyde; published 3-24-99
- Clopyralid; published 3-24-99
- Imidacloprid; published 3-24-99
- Norflurazon; published 3-24-99

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Federal Acquisition Regulation (FAR):
- Labor disputes; contracts for Government notification; published 3-24-99

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Nectarines and peaches grown in—
- California; comments due by 3-29-99; published 3-8-99

Olives grown in—
- California; comments due by 3-29-99; published 1-28-99

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Animal welfare:
- Rats and mice bred for use in research and birds; definition as animals; rulemaking petition; comments due by 3-29-99; published 1-28-99

Plant-related quarantine, domestic:
- Citrus canker; comments due by 4-2-99; published 2-1-99

Plant-related quarantine, foreign:
- Cut flowers; importation; comments due by 3-29-99; published 1-28-99

AGRICULTURE DEPARTMENT

Farm Service Agency

Program regulations:
- Indian Tribes and tribal corporations; loan debt forgiveness; comments due by 4-2-99; published 3-3-99

AGRICULTURE DEPARTMENT

Rural Business-Cooperative Service

Program regulations:
- Indian Tribes and tribal corporations; loan debt forgiveness; comments due by 4-2-99; published 3-3-99

AGRICULTURE DEPARTMENT

Rural Housing Service

Program regulations:
- Indian Tribes and tribal corporations; loan debt forgiveness; comments due by 4-2-99; published 3-3-99

AGRICULTURE DEPARTMENT

Rural Utilities Service

Program regulations:
- Indian Tribes and tribal corporations; loan debt forgiveness; comments due by 4-2-99; published 3-3-99

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:
- Atlantic coastal fisheries—
  - Atlantic sturgeon; comments due by 3-29-99; published 2-26-99
- Northeastern United States fisheries—
  - Summer flounder, et al.; comments due by 3-29-99; published 1-27-99
- West Coast States and Western Pacific fisheries—
  - Pacific Coast groundfish; comments due by 3-29-99; published 2-10-99
- West Coast States and Western Pacific Fisheries—
  - West Coast Salmon; comments due by 3-29-99; published 1-27-99

International fisheries regulations:
- Pacific tuna; conservation and management measures; comments due by 3-29-99; published 2-25-99

Marine mammals:
- Incidental taking—
  - BP Exploration; Beaufort Sea; offshore oil and gas platform construction and operation; comments due by 3-31-99; published 3-1-99

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Federal claims collection; comments due by 3-29-99; published 1-28-99

DEFENSE DEPARTMENT

Federal Acquisition Regulation (FAR):
- Conforming late offer treatment; comments due by 3-29-99; published 1-27-99
- Interest and other financial costs; comments due by 3-30-99; published 1-29-99

ENVIRONMENTAL PROTECTION AGENCY

Air pollution; standards of performance for new stationary sources:
- Steel plants; electric arc furnaces; comments due by 4-1-99; published 3-2-99

Air programs:
- Fuels and fuel additives—
  - Methylcyclopentadienyl manganese tricarbonyl (MMT); Alternative Tier 2 health and exposure testing requirements; comments due by 3-30-99; published 2-9-99
- Stratospheric ozone protection—
  - Montreal Protocol adjustment for 1999 interim reduction in Class I, Group VI controlled substances; comments due by 3-29-99; published 2-25-99

Air quality implementation plans; approval and promulgation; various States:
- Alabama; comments due by 3-31-99; published 3-1-99
- District of Columbia; comments due by 3-29-99; published 2-25-99
- Louisiana; comments due by 3-29-99; published 2-25-99
- Missouri; comments due by 3-29-99; published 2-26-99
- New Jersey; comments due by 3-31-99; published 3-1-99

Hazardous waste program authorizations:
- Michigan; comments due by 4-1-99; published 3-2-99
- Wyoming; comments due by 3-29-99; published 2-25-99

Hazardous waste:
- Lead-based paint debris; toxicity characteristic rule; temporary suspension; comments due by 4-2-99; published 2-12-99
- Waste water treatment sludges from metal finishing industry; 180-day accumulation time; comments due by 4-2-99; published 2-1-99

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
- Azoxystrobin; comments due by 3-30-99; published 1-29-99
- Fenbuconazole; comments due by 3-30-99; published 1-29-99
- Lambda-cyhalothrin; comments due by 3-30-99; published 1-29-99

Toxic substances:
- Lead-based paint activities—
  - Lead-based paint debris; management and disposal; comments due by 4-2-99; published 2-12-99

FEDERAL COMMUNICATIONS COMMISSION

Radio stations; table of assignments:
- Colorado; comments due by 3-29-99; published 2-17-99
- Idaho; comments due by 3-29-99; published 2-17-99
- Kansas; comments due by 3-29-99; published 2-17-99
- Louisiana; comments due by 3-29-99; published 2-17-99
- New Hampshire; comments due by 3-29-99; published 2-17-99
- New York; comments due by 3-29-99; published 2-17-99
- North Dakota; comments due by 3-29-99; published 2-17-99
- Oregon; comments due by 3-29-99; published 2-17-99
- Wisconsin; comments due by 3-29-99; published 2-17-99

Television broadcasting:
- Digital Television Service Industry Coordination

Committee; establishment; comments due by 3-29-99; published 2-9-99
Television stations; table of assignments:
Arkansas; comments due by 3-29-99; published 2-17-99

GENERAL SERVICES ADMINISTRATION
Acquisition regulations:
Federal Supply Service multiple award schedule contracts; streamlining administration and clarifying marking requirements; comments due by 4-2-99; published 2-1-99
Federal Acquisition Regulation (FAR):
Conforming late offer treatment; comments due by 3-29-99; published 1-27-99
Interest and other financial costs; comments due by 3-30-99; published 1-29-99

HEALTH AND HUMAN SERVICES DEPARTMENT
Food and Drug Administration
Food for human consumption:
Food labeling—
Dietary supplements; nutrition labeling on a 'per day' basis; comments due by 3-29-99; published 1-12-99

INTERIOR DEPARTMENT
Land Management Bureau
Minerals management:
Oil and gas leasing—
Performance standards in lieu of current prescriptive requirements; comments due by 4-2-99; published 12-3-98

INTERIOR DEPARTMENT
Fish and Wildlife Service
Endangered and threatened species:
Findings on petitions, etc.—
Vermillion darter; comments due by 3-29-99; published 1-26-99
Santa Ana sucker; comments due by 3-29-99; published 1-26-99

JUSTICE DEPARTMENT
Immigration and Naturalization Service
Immigration:
Aliens—
Temporary protected status; employment authorization fee requirements, etc.; comments due by 4-2-99; published 2-1-99

JUSTICE DEPARTMENT
Parole Commission
Federal prisoners; paroling and releasing, etc.:
District of Columbia Code; prisoners serving sentences; comments due by 3-31-99; published 2-4-99

LABOR DEPARTMENT
Pension and Welfare Benefits Administration
Employee Retirement Income Security Act:
Employee pension and welfare benefit plans; recordkeeping and disclosure requirements; use of electronic media; comments due by 3-29-99; published 1-28-99

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION
Federal Acquisition Regulation (FAR):
Conforming late offer treatment; comments due by 3-29-99; published 1-27-99
Interest and other financial costs; comments due by 3-30-99; published 1-29-99

NATIONAL CREDIT UNION ADMINISTRATION
Credit unions:
Truth in Savings Act—
Fee disclosure, dividend rates, annual percentage yield et al.; comments due by 3-29-99; published 12-29-98

NUCLEAR REGULATORY COMMISSION
Spent nuclear fuel and high-level radioactive waste; independent storage; licensing requirements:
Approved spent fuel storage casks; list addition; comments due by 3-29-99; published 1-11-99

SECURITIES AND EXCHANGE COMMISSION
Securities:
Sweden; securities exemption for purposes of trading futures contracts; comments due by 3-31-99; published 3-1-99

TRANSPORTATION DEPARTMENT
Coast Guard
Anchorage regulations:
Florida; comments due by 3-29-99; published 1-26-99
Boating safety:
Numbering undocumented vessels in Alaska; fee increase; comments due by 4-2-99; published 2-1-99
Regattas and marine parades:
Fleet's Albany Riverfest; comments due by 4-2-99; published 2-1-99
Hudson Valley Triathlon; comments due by 4-2-99; published 2-1-99
Tank vessels:
Tank barges; emergency control measures; comments due by 3-30-99; published 12-30-98

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Aerospatiale; comments due by 3-30-99; published 2-23-99
Bell Helicopter Textron, Inc.; comments due by 3-29-99; published 1-26-99
Boeing; comments due by 3-29-99; published 2-10-99
Hartzell Propeller Inc.; comments due by 3-29-99; published 1-27-99
McDonnell Douglas; comments due by 3-29-99; published 1-28-99
Class E airspace; comments due by 3-29-99; published 2-12-99
Class E airspace; correction; comments due by 3-29-99; published 2-19-99

TRANSPORTATION DEPARTMENT
Maritime Administration
Cargo preference—U.S.-flag commercial vessels:
Carriage of agricultural exports; comments due by 3-29-99; published 1-28-99

TRANSPORTATION DEPARTMENT
National Highway Traffic Safety Administration
Anthropomorphic test devices:
Occupant crash protection—
Hybrid III test dummies; 3-year-old child dummy; design and performance specifications; comments due by 3-29-99; published 1-28-99
Motor vehicle safety standards:
Occupant crash protection—
Child restraint systems; Federal regulatory review; comments due by 4-2-99; published 2-1-99
Vehicle certification—
Altered vehicles; certification labels contents requirements; comments due by 3-29-99; published 2-11-99

TREASURY DEPARTMENT
Internal Revenue Service
Income taxes:
Tax return preparers' signatures; retention; comments due by 3-31-99; published 12-31-98

TREASURY DEPARTMENT
United States Mint
Exchange of paper currency and coin:
Melting discontinuance and substitution of mechanical means to destroy mutilated coins; comments due by 3-29-99; published 1-27-99

VETERANS AFFAIRS DEPARTMENT
Acquisition regulations:
Tax-free tobacco products; comments due by 3-30-99; published 1-29-99