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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1220

[No. LS–99–17]

Soybean Promotion and Research: The Procedures To Request a Referendum; Correction.

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule; correction.

SUMMARY: The Agricultural Marketing Service (AMS) is redesignating the section numbers in a final rule published in the **Federal Register** on August 20, 1999.

EFFECTIVE DATE: January 3, 2000.

FOR FURTHER INFORMATION CONTACT: Ralph L. Tapp, Chief, Marketing Programs Branch, Room 2627–S; Livestock and Seed Program, AMS, USDA; STOP 0251; 1400 Independence Avenue, SW.; Washington, D.C. 20090–6456; telephone 202/720–1115.

SUPPLEMENTARY INFORMATION:

Background

The Department of Agriculture (Department) published a final rule in the **Federal Register** on August 20, 1999 (64 FR 45413), on the procedures for a Request for Referendum pursuant to the Soybean Promotion, Research, and Consumer Information Act (7 U.S.C. 6301–6311) and the Soybean Promotion and Research Order (7 CFR part 1220). The final rule established a new subpart F, Procedures to Request a Referendum, under part 1220 of Title 7 of the Code of Federal Regulations. Currently, part 1220 consists of two subparts, subpart A—Soybean Promotion and Research Order § 1220.101 through § 1220.257 and subpart B—Rules and Regulations § 1220.301 through § 1220.332. Prior to issuance of the final rule subparts C through F were reserved. The final rule designated the sections for subpart F as § 1220.10 through § 1220.46. These section designations are not in numerical sequence with existing regulations. Accordingly, this action redesignates § 1220.10 through § 1220.46 as § 1220.600 through § 1220.631. In addition, the cross reference to § 1220.36 in § 1220.33 is redesignated as § 1220.621, and the cross references to § 1220.39 and § 1220.40 in § 1220.42 are redesignated as § 1220.624 and § 1220.625.

Correction

In FR Doc. 99–21672, published August 20, 1999 (64 FR 45413), the Department makes the following corrections:

1. On page 45416, in the second and third columns in the Table of Contents for subpart F, § 1220.10–§ 1220.46 are redesignated as § 1220.600-§ 1220.631;

2. on page 45417, in the third column, the cross reference to § 1220.36 in § 1220.33 is redesignated as § 1220.621;

3. On pages 45416–45419, the sections of the regulatory text of subpart F, §1220.10–§ 1220.46 are redesignated as § 1220.600–§ 1220.631; and 4. On page 45419, first column, the cross references to § 1220.39 and § 1220.40 in § 1220.42 are redesignated as § 1220.624 and § 1220.625.

Dated: December 22, 1999.

Barry L. Carpenter,

Deputy Administrator, Livestock and Seed Program.

[FR Doc. 99–34059 Filed 12–30–99; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–323–AD; Amendment 39–11487; AD 99–27–06]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 757–200, –200PF, and –200CB Series Airplanes

Powered by Rolls-Royce RB211–535C/E4/E4B Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 757–200, –200PF, and –200CB series airplanes, that requires repetitive inspections of the engine thrust control cable system to detect discrepancies of the wire rope, fittings, and pulleys; and replacement, if necessary. This amendment also requires a one-time inspection to determine the part number of certain pulleys and replacement of existing pulleys with new pulleys, if necessary; and modification of the engine thrust control cable installation. This amendment is prompted by reports of failure of certain engine thrust control cables. The actions specified by this AD are intended to prevent failure of certain engine thrust control cables, which could result in a severe asymmetric thrust condition during landing, and consequent reduced controllability of the airplane.

DATES: Effective February 7, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 7, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Kathrine Rask, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1547; fax (425) 227–1181.

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 certain Boeing Model 757–200, –200PF, and –200CB series airplanes was published as a supplemental notice of proposed rulemaking (NPRM) in the **Federal Register** on September 10, 1999 (64 FR 49105). That action proposed to require modification of the engine thrust control

cable installation, and repetitive inspections to detect certain discrepancies of the cables, pulleys, pulley brackets, and cable travel; and repair, if necessary. That action also proposed to require a one-time inspection to determine the part number of thrust control cable pulleys and replacement of existing pulleys with new pulleys, if necessary.

Comments

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

Support for the Proposal

One commenter supports the proposed rule, and one commenter states that it is not affected by the rule and has no comments.

Request To Include Additional Source of Service Information

One commenter requests that the FAA cite Boeing Service Bulletin 757–30A0018, Revision 2, dated September 9, 1999, as an additional source of service information for accomplishment of the modification specified in paragraph (e) of the proposed rule.

The FAA concurs with the commenter's request. Boeing Service Bulletin 757–30A0018, Revision 2, removes an airplane that has a different routing of the window heat wire bundle (and, therefore, does not need the support bracket assembly to ensure proper clearance between the wire bundle and engine thrust control cable) from the effectivity listing. In addition, Revision 2 corrects minor errors in the accomplishment instructions. The FAA has revised paragraph (e) of the final rule to state that the paragraph is applicable to airplanes listed in Revision 2 of the service bulletin. Also, paragraph (e) has been revised to reference Revision 2 of the service bulletin, in addition to Boeing Alert Service Bulletin 757–30A0018, Revision 1, dated September 17, 1998 (which was cited in the proposal), as appropriate sources of service information.

Request To Revise Cost Impact

One commenter states that it would take approximately 18 work hours per airplane to accomplish the inspection specified in paragraph (a) of the proposed rule. The commenter also requests that the Cost Impact section include the estimated cost for replacement of phenolic pulleys with aluminum pulleys, specified in paragraph (b) of the proposed rule. The FAA concurs with the commenter's requests and has revised the Cost Impact section of the final rule in accordance with new cost data provided by the commenter and the airplane manufacturer.

Request To Revise Applicability

One commenter requests that Model 757–200PF series airplanes be removed from the applicability of the proposed AD. The commenter states that Model 757–200PF series airplanes are not listed in the effectivity of any of the Boeing service bulletins referenced in the proposed AD.

The FAA does not concur. Although Model 757–200PF series airplanes are not subject to paragraphs (c), (d), and (e) of the final rule (which reference Boeing service bulletins), these airplanes are subject to paragraphs (a) and (b). The engine installation of the Rolls-Royce Model RB211–535E4 turbofan engine on the Model 757–200 and –200PF series airplanes is identical; therefore, the same unsafe condition exists. No change to the final rule is necessary in this regard.

Request To Eliminate Repetitive Inspections

One commenter requests that the repetitive inspections of the engine thrust control cables be removed from the proposed AD. The commenter states that the proposed rule addresses specific failure modes of the cables, and that once those corrective actions have been accomplished, the existing Boeing Maintenance Planning Document (MPD) inspection interval is adequate. The commenter states that the tracking and records burden of the repetitive inspections would not provide a cost-effective benefit or substantially increase safety margins. The commenter suggests that, if the FAA determines that more frequent inspections are necessary, a maintenance review board (MRB) revision would be the most appropriate means to provide for such inspections.

The FAA does not concur with the commenter's request. The corrective actions and modifications to the engine thrust control cable installation specified in paragraphs (b) through (e) of the AD do not eliminate the unsafe condition. The thrust reverser control system on this airplane model is such that, when the engine thrust control ''B'' cable fails during landing, it changes the position of the thrust reverser directional control valve causing the thrust reverser to stow and the engine to accelerate. The opposite engine is unaffected by the cable failure and remains in full reverse. This severe asymmetric thrust condition during landing is the unsafe condition. None of the modifications required by this AD change the failure mode of the cable. The repetitive inspections specified in paragraph (a) of the AD are intended to detect wear and corrosion prior to cable failure. Such wear and corrosion could be caused by numerous problems, not just those addressed by the actions specified in paragraphs (b) through (e) of the AD. Furthermore, a revision to the MRB report would not adequately address the unsafe condition. The MRB process allows for extension of inspection intervals, on an operator-by-operator basis, based on the rate of discrepancies identified in previous inspections. The discrepancies detected during the repetitive inspections would not necessarily be chronic problems but could be induced by unrelated airplane configuration changes near the cable run. No change to the final rule is necessary in this regard.

Request To Extend Repetitive Inspection Interval

One commenter requests that the interval for the repetitive inspections specified in paragraph (a) of the proposed rule be extended to an interval coinciding with a ''2C'' check. The commenter states that this is what is currently required by the Boeing MPD.

The FAA does not concur. There have been two engine thrust control cable failures on Model 757 series airplanes. One event was described in the NPRM. Another event, which the FAA became aware of shortly before the NPRM was released, occurred in January 1999. There was no evidence in these events that the operators were not following the Boeing MPD recommendation for thrust control cable inspections every ''2C'' check. Given this experience and the possibly catastrophic effect of a thrust control cable failure, the FAA has determined that it is necessary to require more frequent inspections of the cable installation. Therefore, this AD requires the cable inspection at an interval coinciding approximately with a ''C'' check for the majority of the affected fleet. No change to the final rule is necessary in this regard.

In addition, two commenters request that the repetitive interval for the inspections specified in paragraph (a) of the proposed rule be extended. The commenters suggest intervals that would coincide with the commenters' own ''C'' check intervals. One commenter states that the proposed interval would require special scheduling and would create an economic burden. The other commenter notes that the FAA stated in the proposed rule that it is the FAA's intent that the inspections be performed

during a regular scheduled maintenance visit.

The FAA does not concur with the commenters' request to extend the compliance time. In developing an appropriate compliance time for this action, the FAA considered not only the practical aspect of accomplishing the inspections at an interval of time that parallels normal scheduled maintenance for the majority of affected operators, but the possible failure modes of the engine thrust control cables. In consideration of these items, as well as the in-service failures of the cables described previously, the FAA has determined that 24 months or 6,000 flight hours, whichever occurs first, represents an appropriate interval of time allowable wherein the inspections can be accomplished during scheduled maintenance intervals for the majority of affected operators, and an acceptable level of safety can be maintained. No change to the final rule is necessary in this regard.

Request To Eliminate One-Time Inspection

One commenter requests that paragraph (b) of the proposed rule, which requires a one-time inspection of the engine thrust control cable pulleys in the struts and replacement of any phenolic pulleys with aluminum pulleys, be removed. Instead, the commenter suggests that the phenolic pulleys be replaced with aluminum pulleys only if damage is detected during the repetitive inspections specified in paragraph (a) of the proposed rule. The commenter states that the repetitive inspections would preclude the elapse of a significant time period of operation with a seized pulley and that a seized pulley would be identified before any significant cable wear could occur.

The FAA does not concur. Although the in-service problems with the phenolic pulleys in a high-temperature environment have not resulted in an engine thrust control cable failure, the FAA has determined that there is enough variability in how airplanes in the fleet are operated, in addition to the possible catastrophic effect of a cable failure, to warrant removal of the phenolic pulleys prior to seizure. Therefore, no change to the final rule is necessary in this regard.

Request To Clarify Affected Part Numbers

Two commenters suggest that phenolic engine thrust control cable pulleys having part number (P/N) BACP30M4 in the strut be included in any requirement that specifies phenolic pulleys having P/N 65B80977–1. The commenters state that pulleys having P/N BACP30M4 are interchangeable with pulleys having P/N 65B80977–1 and are installed on many of the airplanes affected by the proposed rule.

The FAA concurs. Paragraph (b) of the final rule has been revised to include phenolic pulleys having P/N BACP30M4. The FAA has determined that this addition does not necessitate reopening of the comment period. The supplemental NPRM clearly states in the preamble that the unsafe condition is associated with any phenolic pulleys in the struts, not just those having P/N 65B80977–1. Therefore, the FAA finds that the public has had a reasonable opportunity to comment on its intent.

Request for Information on Service Information

One commenter notes that paragraph (b) of the proposed rule does not reference a service bulletin. The commenter requests information regarding the availability of service information for the actions specified in paragraph (b), and the configuration of the airplanes to which paragraph (b) applies at the time of airplane delivery to the operator. No specific change to the rule is requested.

The FAA agrees that paragraph (b) of the proposed rule does not reference a service bulletin. The airplane manufacturer has not issued a service bulletin for the Model 757 series airplane describing procedures for the actions specified in paragraph (b); however, it has published Boeing Service Letter 757–SL–004–A, dated July 21, 1997, addressing this subject. Model 757 series airplanes powered by Rolls-Royce engines and having line numbers 1 through 636 inclusive were delivered from the airplane manufacturer to the operator with phenolic pulleys installed in the struts. Airplanes having line numbers 637 and subsequent were delivered with aluminum pulleys installed in the struts. No specific change to the final rule is necessary in this regard.

Request To Extend Compliance Time for Modification

One commenter requests that the compliance time for the modification specified in paragraph (e) of the proposed rule be extended. The commenter suggests no specific compliance time. The commenter states that a single failure without sufficient evidence that the engine thrust control cable was being inspected in accordance with the Boeing MPD does not warrant regulatory action within 60 days.

The FAA does not concur with the commenter's request to extend the compliance time. In developing an appropriate compliance time for this action, the FAA considered the safety implications, parts availability, and normal maintenance schedules for timely accomplishment of the modification. In consideration of these items, as well as a report of another airplane with contact between the window heat wire bundle and engine thrust control cables in service, the FAA has determined that 60 days represents an appropriate interval of time allowable wherein the modifications can be accomplished during scheduled maintenance intervals for the majority of affected operators, and an acceptable level of safety can be maintained. No change to the final rule is necessary in this regard.

Explanation of Other Changes to Cost Impact

The cost impact section, below, has been revised. The applicability of the AD has not changed, but because the airplane model affected by this AD is continuing to be manufactured, the number of affected airplanes has increased slightly since publication of the proposed rule. Also, the proposed rule estimated the cost of the one-time inspection for all airplanes; however, this action only applies to a limited number of airplanes.

Conclusion

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

Cost Impact

There are approximately 500 Model 757–200, –200PF, and –200CB series airplanes of the affected design in the worldwide fleet. The FAA estimates that 257 airplanes of U.S. registry will be affected by this AD.

For all airplanes, it will take approximately 18 work hours per airplane to accomplish the required inspection to verify the integrity of the thrust control cables, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this inspection required by this AD on U.S. operators is estimated to be $277,560, or $1,080 per airplane, per inspection cycle.

For airplanes required to accomplish the one-time inspection to determine the part number of the thrust control cable pulleys (142 U.S.-registered airplanes), it will take approximately 1 work hour per airplane, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this inspection required by this AD on U.S. operators is estimated to be $8,520, or $60 per airplane.

Should an operator be required to accomplish the pulley replacement, it will take approximately 16 work hours per airplane, at an average labor rate of $60 per work hour. Required parts will cost approximately $2,224 per airplane. Based on these figures, the cost impact of this inspection required by this AD on U.S. operators is estimated to be $3,184 per airplane.

For airplanes identified in Boeing Service Bulletin 757–76–1 (8 U.S.-registered airplanes), it will take approximately 2 work hours per airplane to accomplish the required guide bracket removal, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this replacement required by this AD on U.S. operators is estimated to be $960, or $120 per airplane.

For airplanes identified in Boeing Service Bulletin 757–76–0005 (14 U.S.-registered airplanes), it will take approximately 14 work hours per airplane to accomplish the required replacement, at an average labor rate of $60 per work hour. Required parts will cost approximately $1,410 per airplane. Based on these figures, the cost impact of this replacement required by this AD on U.S. operators is estimated to be $31,500, or $2,250 per airplane.

For airplanes identified in Boeing Alert Service Bulletin 757–30A0018, Revision 1 (167 U.S.-registered airplanes), it will take approximately 2 work hours per airplane to accomplish the required installation and adjustment, at an average labor rate of $60 per work hour. Required parts will cost approximately $192 per airplane. Based on these figures, the cost impact of this installation and adjustment required by AD on U.S. operators is estimated to be $52,104, or $312 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations 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:

99–27–06 Boeing: Amendment 39–11487. Docket 98–NM–323–AD.

Applicability: Model 757–200, –200PF, and –200CB series airplanes powered by Rolls-Royce RB211–535C/E4/E4B turbofan engines, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f) 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 engine thrust control cable failure, which could result in a severe asymmetric thrust condition during landing, and consequent reduced controllability of the airplane, accomplish the following:

Inspections and Corrective Actions

(a) Within 24 months or 6,000 flight hours after the effective date of this AD, whichever occurs first: Accomplish the ''Thrust Control Cable Inspection Procedure'' specified in Appendix 1. (including Figure 1) of this AD to verify the integrity of the thrust control cables. Prior to further flight, repair any discrepancy found in accordance with the procedures described in the Boeing 757 Maintenance Manual. Repeat the inspection thereafter at intervals not to exceed 24 months or 6,000 flight hours, whichever occurs first.

(b) For airplanes having line numbers 1 through 636 inclusive: Within 24 months or 6,000 flight hours after the effective date of this AD, whichever occurs first, perform a one-time inspection of the 8 engine thrust control cable pulleys in the struts (4 in each strut) to determine the part number (P/N) of each pulley. If any pulley having P/N 65B80977–1 or BAC30M4 is installed, prior to further flight, replace it with a pulley having P/N 255T1232–7, in accordance with the procedures described in the Boeing 757 Airplane Maintenance Manual.

Note 2: The location of the pulleys to be inspected in accordance with paragraph (b) of this AD is specified in Chapters 53–11–53–04, 76–11–52–01, and 76–11–52–02 of the Boeing 757 Illustrated Parts Catalog.

Modifications

(c) For airplanes identified in Boeing Service Bulletin 757–76–1, dated May 18, 1984: Within 24 months or 6,000 flight hours after the effective date of this AD, whichever occurs first, remove the guide bracket of the engine thrust control cable located on the front spar of the right wing in accordance with the service bulletin.

(d) For airplanes identified in Boeing Service Bulletin 757–76–0005, dated May 5, 1988: Within 24 months or 6,000 flight hours after the effective date of this AD, whichever occurs first, remove the engine thrust control cable breakaway stop assemblies, and replace sections of the engine thrust control cables with smaller diameter cables in accordance with the service bulletin.

(e) For airplanes identified in Boeing Service Bulletin 757–30A0018, Revision 2, dated September 9, 1999: Within 60 days after the effective date of this AD, install a support bracket assembly between the window heat wire bundle and the engine thrust control cable; and adjust the wire bundle clearance, as necessary, to parallel the minimum clearance specified in Boeing Alert Service Bulletin 757–30A0018, Revision 1, dated September 17, 1998; or Boeing Service Bulletin 757–30A0018, Revision 2, dated September 9, 1999.

Alternative Method of Compliance

(f) 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, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

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

Special Flight Permits

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

Incorporation by Reference

(h) Except as provided by paragraphs (a) and (b) of this AD, the modifications shall be done in accordance with Boeing Service Bulletin 757–76–1, dated May 18, 1984; Boeing Service Bulletin 757–76–0005, dated May 5, 1988; Boeing Alert Service Bulletin 757–30A0018, Revision 1, dated September 17, 1998; and Boeing Service Bulletin 757–30A0018, Revision 2, dated September 9, 1999. 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 Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(i) This amendment becomes effective on February 7, 2000.

Appendix 1.— Thrust Control Cable Inspection Procedure

1. General

A. Clean the cables, if necessary, for the inspection, in accordance with Boeing 757 Maintenance Manual 12–21–31.

B. Use these procedures to verify the integrity of the thrust control cable system. The procedures must be performed along the entire cable run for each engine. To ensure verification of the portions of the cables which are in contact with pulleys and quadrants, the thrust control must be moved by operation of the thrust and/or the reverse thrust levers to expose those portions of the cables.

C. The first task is an inspection of the control cable wire rope. The second task is an inspection of the control cable fittings. The third task is an inspection of the pulleys.

Note: These three tasks may be performed concurrently at one location of the cable system on the airplane, if desired, for convenience.

2. Inspection of the Control Cable Wire Rope

A. Perform a detailed visual inspection to ensure that the cable does not contact parts other than pulleys, quadrants, cable seals, or grommets installed to control the cable routing. Look for evidence of contact with other parts. Correct the condition if evidence of contact is found.

Note: For the purposes of this procedure, a detailed visual inspection is defined as: ''An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required.''

B. Perform a detailed visual inspection of the cable runs to detect incorrect routing, kinks in the wire rope, or other damage. Replace the cable assembly if:

(1) One cable strand had worn wires where one wire cross section is decreased by more than 40 percent (see Figure 1), (2) A kink is found, or

(3) Corrosion is found.

C. Perform a detailed visual inspection of the cable: To check for broken wires, rub a cloth along the length of the cable. The cloth catches on broken wires.

(1) Replace the 7x7 cable assembly if there are two or more broken wires in 12 continuous inches of cable or there are three or more broken wires anywhere in the total cable assembly.

(2) Replace the 7x19 cable assembly if there are four or more broken wires in 12 continuous inches of cable or there are six or more broken wires anywhere in the total cable assembly.

3. Inspection of the Control Cable Fittings

A. Perform a detailed visual inspection to ensure that the means of locking the joints are intact (wire locking, cotter pins, turnbuckle clips, etc.). Install any missing parts.

B. Perform a detailed visual inspection of the swaged portions of swaged end fittings to detect surface cracks or corrosion. Replace the cable assembly if cracks or corrosion are found.

C. Perform a detailed visual inspection of the unswaged portion of the end fitting. Replace the cable assembly if a crack is visible, if corrosion is present, or if the end fitting is bent more than 2 degrees.

D. Perform a detailed visual inspection of the turnbuckle. Replace the turnbuckle if a crack is visible or if corrosion is present.

4. Inspection of Pulleys

A. Perform a detailed visual inspection to ensure that pulleys are free to rotate.

BILLING CODE 4910–13–P

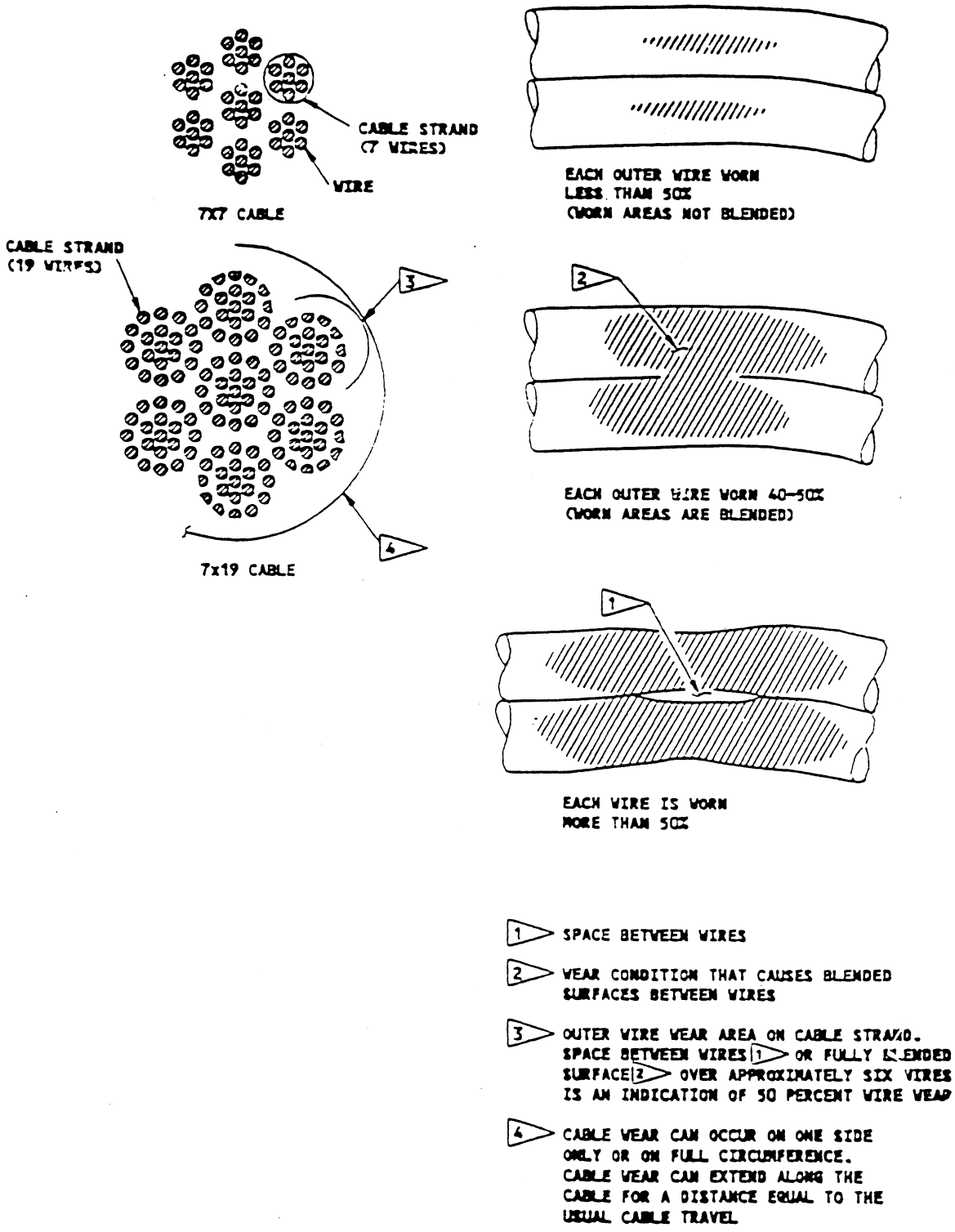

FIGURE 1

BILLING CODE 4910–13–C

Issued in Renton, Washington, on December 22, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–33731 Filed 12–30–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 201, 341, and 369

[Docket Nos. 98N–0337, 96N–0420, 95N–0259, 90P–0201]

RIN 0910–AA79

Over-The-Counter Human Drugs; Labeling Requirements; Final Rule; Technical Amendment

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendment.

SUMMARY: The Food and Drug Administration (FDA) is amending the regulation that established a standardized format and standardized content requirements for the labeling of over-the-counter (OTC) drug products, and is amending several related OTC drug product labeling regulations. This amendment corrects and conforms several aspects of the new labeling requirements to other regulatory provisions and eliminates unnecessary text from the new labeling regulation.

DATES: This regulation is effective January 3, 2000. Submit written comments by March 18, 2000.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Cazemiro R. Martin or Gerald M. Rachanow, Center for Drug Evaluation and Research (HFD–560), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–2222.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of March 17, 1999 (64 FR 13254), FDA published a final rule establishing a standardized format and standardized content requirements for the labeling of OTC drug products. The final rule is codified primarily in § 201.66 (21 CFR 201.66). The rule was effective on May 16, 1999 (64 FR 18571, April 15, 1999), but is subject to a detailed implementation plan outlined in the final rule (64 FR 13254 at 13273 to 13274).

II. Technical Amendments

1. Section 201.66(c) states that the information in paragraphs (c)(1) through (c)(8) must appear in the order listed. Section 201.66(c)(5)(ii)(A) contains the ''Allergy alert'' warning, followed by § 201.66(c)(5)(ii)(B), which contains the ''Reye's syndrome'' warning required under § 201.314(h)(1) (21 CFR 201.314(h)(1)). The order in § 201.66(c)(5)(ii) is not consistent with another FDA labeling provision.

Under § 201.314(h)(2), the Reye's syndrome warning must be the first warning listed under the ''Warnings'' heading. To conform § 201.66(c)(5)(ii) to § 201.314(h)(2), the agency is redesignating paragraph (c)(5)(ii)(A) as paragraph (c)(5)(ii)(B) and paragraph (c)(5)(ii)(B) as paragraph (c)(5)(ii)(A). In addition, the agency is correcting the word ''Reye'' to read ''Reye's'' in § 201.314(h)(1).

2. Section 201.66(c)(5)(iii) requires the use of the subheading ''Do not use.'' Section 330.1(i)(38) (21 CFR 330.1(i)(38)) allows the phrases ''give to'' and ''use in'' to be used interchangeably. However, § 201.66(f) does not allow the use of interchangeable terms in subheadings. This limitation on the use of interchangeable terms may cause some confusion when applied to certain monoamine oxidase inhibitor warnings.

Specifically, the monoamine oxidase inhibitor (MAOI) warning in §§ 341.74(c)(4)(vi) (21 CFR 341.74(c)(4)(vi)) and 341.80(c)(1)(ii)(D) (21 CFR 341.80(c)(1)(ii)(D)) provides slightly different language for products labeled only for children under 12 years of age. The warning states: ''Do not give to a child who * * *''. Similarly, the warning under the entry ''SODIUM GENTISATE'' in § 369.21 (21 CFR 369.21) contains a warning that states ''Do not give to children * * *''. To allow these warnings to conform to the required subheadings in the new labeling format, the agency is revising these warnings to replace the words ''give to'' with the words ''use in.''

3. Section 201.66(d)(3) of the final rule provides, in relevant part, that the title, headings, subheadings, and information in paragraphs (c)(1) through (c)(9) must not appear in reverse type, and that the required labeling must be all black or one dark color, printed on a white or other light, neutral color, contrasting background. Section 201.66(d)(3) also provides for the use of a single, alternative, contrasting dark color to highlight the Drug Facts title and headings.

Section 201.66(d)(3) is based on the finding that color contrast between text and background is a significant factor affecting the legibility of OTC drug product labeling. Generally, high contrast between the color of the text and the color of the background can significantly improve legibility. If, however, the text blends into the background, consumers may have difficulty focusing on and reading the information.

The final rule recognizes that black text on a white background is the most common way to achieve high contrast. However, to emphasize the importance of contrast and to provide more options than black on white labeling, the agency included the terms ''dark'' text and ''light'' background in § 201.66(d)(3). After receiving several inquiries from manufacturers about the meaning of these terms, the agency has decided that the rule would be less confusing if the terms ''dark,'' ''light,'' and ''reverse type'' (i.e., ''light'' type on a ''dark'' background) were deleted.

Section 201.66(d)(3) is intended to ensure adequate contrast between text and background. The terms ''dark'' and ''light'' may have added an unnecessary element of complexity to the rule. Aside from the difficulty in assigning a fixed meaning to these terms, the agency acknowledges that there may be combinations of light text on a dark background that, assuming high contrast, would be consistent with achieving readable OTC drug product labeling. (See, e.g., Ref. 2 at 62 FR 9024 at 9049 (February 27, 1997), noting that in OTC drug labeling white text on a brown background may provide good, readable contrast.)

To eliminate possible confusion, while keeping the emphasis in the final rule on achieving high contrast, the agency is removing the words ''dark'' and ''light'' and the phrase ''shall not appear in reverse type'' from § 201.66(d)(3). Thus, the amended version of the rule requires black on white text or, any other combination of a single color of text on a contrasting background. Generally, the agency expects the color contrast used in the Drug Facts labeling to be at least as high as that used in a product's principal display panel or other promotional labeling.

These amendments institute minor changes and corrections to the rule and may provide greater flexibility in the implementation of the new OTC drug labeling requirements. Also, with respect to the third technical amendment, the agency notes that only few comments submitted during the rulemaking process addressed the issue of color contrast. Of these, most supported the need for using good contrast but did not take a substantive position on whether to require only dark on light labeling. As discussed above, the agency is retaining the contrast requirement. Therefore, the agency believes this amendment does not

present a significant or controversial issue that warrants further opportunity for notice and comment rulemaking.

For these reasons, the agency finds for good cause that notice and comment procedures are unnecessary in this instance and that these changes may go into effect immediately (5 U.S.C. 553(b) and (d) and 21 CFR 10.40(c) and (e)). However, in accordance with 21 CFR 10.40(e)(1), the agency will accept comments on these amendments to determine whether they should be modified or revoked.

III. The Paperwork Reduction Act of 1995

FDA analyzed all relevant information collections associated with this rule in the original final rule document (64 FR 13254 at 13274 to 13276). These amendments do not impose any new requirements and, therefore, do not require any further analysis and are not subject to review by the Office of Management and Budget.

IV. Analysis of Impacts

FDA provided a detailed analysis of impacts in the original final rule document (64 FR 13254 at 13276 through 13285). This technical amendment provides several clarifications and allows additional flexibility in the labeling requirements. Thus, no further analysis of impacts is necessary.

V. Environmental Impact

The agency has determined under 21 CFR 25.30(h) 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.

List of Subjects

21 CFR Part 201

Drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 341

Labeling, Over-the-counter drugs.

21 CFR Part 369

Labeling, Medical devices, Over-the-counter drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act, the Public Health Service Act, and under authority delegated to the Commissioner of Food and Drugs, 21 CFR parts 201, 341, and 369 are amended as follows:

PART 201—LABELING

1. The authority citation for 21 CFR part 201 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 358, 360, 360b, 360gg-360ss, 371, 374, 379e; 42 U.S.C. 216, 241, 262, 264.

2. Section 201.66 is amended by redesignating paragraphs (c)(5)(ii)(A) and (c)(5)(ii)(B) as paragraphs (c)(5)(ii)(B) and (c)(5)(ii)(A), respectively, and revising paragraph (d)(3) to read as follows:

§ 201.66 Format and content requirements for over-the-counter (OTC) drug product labeling.

* * * * *

(d) * * *

(3) The title, heading, subheadings, and information in paragraphs (c)(1) through (c)(9) of this section shall be legible and clearly presented, shall have at least 0.5-point leading (i.e., space between two lines of text), and shall not have letters that touch. The type style for the title, headings, subheadings, and all other required information described in paragraphs (c)(2) through (c)(9) of this section shall be any single, clear, easy-to-read type style, with no more than 39 characters per inch. The title and headings shall be in bold italic, and the subheadings shall be in bold type, except that the word ''(continued)'' in the title ''Drug Facts (continued)'' shall be regular type. The type shall be all black or one color printed on a white or other contrasting background, except that the title and the headings may be presented in a single, alternative, contrasting color unless otherwise provided in an approved drug application, OTC drug monograph (e.g., current requirements for bold print in §§ 341.76 and 341.80 of this chapter), or other OTC drug regulation (e.g., the requirement for a box and red letters in § 201.308(c)(1)).

* * * * *

3. Section 201.314 is amended by revising paragraph (h)(1) to read as follows:

§ 201.314 Labeling of drug preparations containing salicylates.

* * * * *

(h)(1) The labeling of orally or rectally administered over-the-counter aspirin and aspirin-containing drug products subject to this paragraph is required to prominently bear a warning. The warning shall be as follows: ''Children and teenagers should not use this medicine for chicken pox or flu symptoms before a doctor is consulted about Reye's syndrome, a rare but serious illness reported to be associated with aspirin.''

* * * * *

PART 341—COLD, COUGH, ALLERGY, BRONCHODILATOR, AND ANTIASTHMATIC DRUG PRODUCTS FOR OVER–THE–COUNTER HUMAN USE

4. The authority citation for 21 CFR part 341 continues to read as follows:

Authority: 21 U.S.C. 321, 351, 352, 353, 355, 360, 371.

5. Section 341.74 is amended by revising paragraph (c)(4)(vi) to read as follows:

§ 341.74 Labeling of antitussive drug products.

* * * * *

(c) * * *

(4) * * *

(vi) *For products containing dextromethorphan or dextromethorphan hydrobromide as identified in § 341.14(a)(3) and (a)(4) when labeled only for children under 12 years of age. Drug interaction precaution.* ''Do not use in a child who is taking a prescription monoamine oxidase inhibitor (MAOI) (certain drugs for depression, psychiatric, or emotional conditions, or Parkinson's disease), or for 2 weeks after stopping the MAOI drug. If you do not know if your child's prescription drug contains an MAOI, ask a doctor or pharmacist before giving this product.''

* * * * *

6. Section 341.80 is amended by revising paragraph (c)(1)(ii)(D) to read as follows:

§ 341.80 Labeling of nasal decongestant drug products.

* * * * *

(c) * * *

(1) * * *

(ii) * * *

(D) *Drug interaction precaution.* ''Do not use in a child who is taking a prescription monoamine oxidase inhibitor (MAOI) (certain drugs for depression, psychiatric, or emotional conditions, or Parkinson's disease), or for 2 weeks after stopping the MAOI drug. If you do not know if your child's prescription drug contains an MAOI, ask a doctor or pharmacist before giving this product.''

* * * * *

PART 369—INTERPRETATIVE STATEMENTS RE WARNINGS ON DRUGS AND DEVICES FOR OVER–THE–COUNTER SALE

7. The authority citation for 21 CFR part 369 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 371.

8. Section 369.21 is amended by revising the entry for ''SODIUM GENTISATE.'' to read as follows:

§ 369.21 Drugs; warning and caution statements required by regulations.

* * * * *

SODIUM GENTISATE. (See §§ 201.314 and 310.301(a)(2) of this chapter.)

Warning—Do not use in children under 6 years of age or use for prolonged period unless directed by physician.

''Keep out of reach of children. In case of overdose, get medical help or contact a Poison Control Center right away.''

If offered for use in arthritis or rheumatism, in juxtaposition therewith, the statement:

Caution—If pain persists for more than 10 days, or redness is present, or in conditions affecting children under 12 years of age, consult a physician immediately.

* * * * *

Dated: December 22, 1999.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 99–34040 Filed 12–30–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 655

[FHWA Docket Nos. 97–2295 (96–47), 97–2335 (96–15), and 97–3032]

RIN 2125–AD68

National Standards for Traffic Control Devices; the Manual on Uniform Traffic Control Devices for Streets and Highways; Standards for Center Line and Edge Line Markings

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final amendments to the Manual on Uniform Traffic Control Devices (MUTCD).

SUMMARY: This document contains amendments to the MUTCD as adopted by the FHWA. The MUTCD is incorporated by reference in 23 CFR part 655, subpart F and recognized as the national standard for traffic control devices on all public roads.

The amendments herein change various sections of Part 3, Markings, of the MUTCD. The FHWA is adopting the amendments pursuant to section 406 of the Department of Transportation and Related Agencies Appropriations Act, FY 1993, which requires that the MUTCD include a national standard to define the roads that must have center line or edge line markings or both, provided that in setting such a standard, consideration be given to the functional classification of roads, traffic volumes, and the number and width of lanes. The FHWA has also received requests to include such standards in the MUTCD for center line or edge line markings. The MUTCD amendments contain the requirements and recommendations for the uniform application and use of center line and edge line markings on streets and highways. The amendments are intended to improve traffic operations and safety through consistent and uniform use of such markings.

DATES: The final rule is effective January 3, 2000. Incorporation by reference of the publication listed in the regulations is approved by the Director of the Federal Register as of January 3, 2000.

FOR FURTHER INFORMATION CONTACT: Mr. Ernest D. L. Huckaby, Office of Transportation Operations, HOTO, (202) 366–9064, or Mr. Raymond W. Cuprill, Office of the Chief Counsel (HCC–20), (202) 366–0834, Department of Transportation, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

Internet users may access all comments received by the U.S. DOT Dockets, Room PL–401, by using the universal resource locator (URL): *http://dms.dot.gov.* It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

An electronic copy of this document may be downloaded using a modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Office of the Federal Register's home page at: *http://www.nara.gov/fedreg* and the Government Printing Office's database at: *http://www.access.gpo.gov/nara.*

The text for these sections of the MUTCD is available from the FHWA Office of Transportation Operations (HOTO–1) or from the FHWA Home Page at the URL: *http://www.ohs.fhwa.dot.gov/devices/mutcd.html.* Please note that the current rewrite sections contained in this docket for MUTCD Part 3 will take approximately 8 weeks from the date of publication before they will be available at this web site.

Background

The 1988 MUTCD is available for inspection and copying as prescribed in 49 CFR part 7. It may be purchased for $57.00 (Domestic) or $71.25 (Foreign) from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 371954, Pittsburgh, PA 15250–7954, Stock No. 650–001–00001–0. The purchase of the MUTCD includes the 1993 revision of Part 6, Standards and Guides for Traffic Controls for Street and Highway Construction, Maintenance, Utility and Incident Management Operation, dated September 1993.

The FHWA both receives and initiates requests for amendments to the MUTCD. Each request is assigned an identification number which indicates by Roman numeral, the organizational part of the MUTCD affected, and by Arabic numeral, the order in which the request was received. The MUTCD request identification number for the amendments promulgated by this final rule is MUTCD Request III–73 (Change), titled ''Standards for Center Line and Edge Line Markings.'' The text changes will be published in the next edition of the MUTCD.

The FHWA is promulgating this final rule in response to MUTCD Request III–73 (Change) as addressed in the proposed rules in Docket Nos. 96–15 and 96–47, to MUTCD Request III–35 (Change) as addressed in Docket No. 87–21, and to section 406 of the Department of Transportation and Related Agencies Appropriations Act, FY 1993 (Pub. L. 102–388, 106 stat. 1520, at 1564). The FHWA rearranged its docket system to accord with the electronic system adopted by the Department of Transportation in 1997. The FHWA Docket Numbers 96–15 and 96–47 were transferred and scanned as FHWA Docket Numbers 97–2335 and 97–2295, respectively. The amendments to the MUTCD and the related actions are contained within this document as well as a discussion summarizing the basis for the amendments.

The FHWA first proposed center line and edge line standards that were published January 27, 1988, at 53 FR 2233 in response to MUTCD Request III–35 (Change). The majority of the commenters believed that the then existing standards did not need to be changed. The FHWA published a decision on January 23, 1989, at 54 FR 2298 that it was not appropriate to set national standards for centerline markings at that time. The decision also stated that the FHWA would consider

alternative actions to better determine standards that are responsive to the motorists needs and to the concerns expressed in the docket comments.

This document contains the disposition of proposed standards for the 1988 MUTCD as published on August 2, 1996, at 61 FR 40484. It also discusses the disposition of an alternative proposed standard subsequently published on January 6, 1997, at 62 FR 691 as part of the proposed future edition of the MUTCD.

In developing these amendments to the 1988 MUTCD, the FHWA has reviewed the comments received in response to the FHWA dockets and other information related to the MUTCD and the proposals.

Definitions

For the purposes of this standard, the following terms shall be defined by the road jurisdiction in accordance with MUTCD Section 1A–9, Definitions of Words and Phrases. The FHWA is considering, through a series of proposed rules, the addition of such terms and definitions in a future edition of the MUTCD. The proposed definitions of ''arterial highway,'' ''collector highway,'' and ''traveled way'' were contained in a proposed rule published at 62 FR 64324 on December 5, 1997, in FHWA Docket 97–3032. The other terms may be included in future proposed rulemaking for the future edition of the MUTCD based on need and public requests.

The following definitions should be used for the terms contained in the proposed rule and this final rule:

Roadway shall mean that portion of a highway improved, designed or ordinarily used for vehicular travel, exclusive of the sidewalk, berm or shoulder even though such sidewalk, berm or shoulder is used by persons riding bicycles or other human powered vehicles. In the event a highway includes two or more separate roadways, the term ''roadway'' as used herein shall refer to any such ''roadway'' separately but not to all such roadways collectively. Roadway includes parking lanes.

Traveled way shall mean that portion of the roadway excluding the parking lanes.

Collector highway shall mean a general term denoting a highway which in rural areas connects small towns and local highways to arterial highways, and in urban areas provides land access and traffic circulation within residential, commercial and business areas and connects local highways to the arterial highways. This highway may be designated as part of a collector highway system.

Arterial highway shall mean a general term denoting a highway primarily used by through traffic, usually on a continuous route or a highway designated as part of an arterial highway system.

Amendments to the MUTCD

The FHWA replaces the fifth paragraph of section 3B–1 of the 1988 version of the MUTCD with the following:

Center line markings shall be placed on paved, 2-way traveled ways on streets and highways having one or more of the following characteristics:

1. Urban and rural arterials and collectors with traveled ways 6 meters (20 feet) or more in width with an ADT of 6000 or greater.

2. Urban and rural traveled ways with 3 lanes or greater.

Center line markings should be placed on paved, 2-way traveled ways on streets and highways having the following characteristics:

1. Urban arterials and collectors with traveled ways 6 meters (20 feet) or more in width with an ADT of 4000 or greater.

2. Rural arterials and collectors with traveled ways 5.4 meters (18 feet) or more in width with an ADT of 3000 or greater.

Center line markings may be placed on other 2-way traveled ways on any street and highway.

On traveled ways less than 4.8 meters (16 feet) wide, an engineering study should be used in determining whether to place center line markings on traveled ways due to traffic encroaching on the pavement edges, due to traffic being affected by parked vehicles, and due to traffic encroachment into the lane of opposing traffic where edge line markings are used.

The FHWA replaces the second paragraph of section 3B–6 of the 1988 version of the MUTCD with the following:

Edge line markings shall be white, except they shall be yellow for the left edge in the direction of travel of the traveled ways of a divided or one way street or highway.

Edge line markings shall be placed for paved traveled ways on streets and highways with the following characteristics:

1. Freeways,

2. Expressways, and

3. Rural arterials with traveled ways 6 meters (20 feet) or more in width with an ADT of 6000 or greater.

Edge line markings should be placed on paved travel ways for streets and highways with the following characteristics:

1. Rural collectors with traveled ways 6 meters (20 feet) or more in width.

2. Other paved streets and highways where engineering study indicates a need.

Edge line markings may be placed on the traveled way on any other street or highway with or without center line markings.

Edge line markings may be excluded based on engineering judgment where the travel way edges are delineated by curbs or other markings.

Compliance Date

Since the changed standards and guidelines for lane markings may impose some additional costs to State and local jurisdictions, the FHWA is establishing a compliance date for the installation of new markings. The compliance date is 3 years after the effective date of this final rule or when pavement lane markings are replaced within an established pavement marking program, or when the highway is resurfaced or reconstructed, whichever date is earlier. This will allow the replacement of the pavement lane markings after the normal service life of the markings.

Discussion of Amendment

The FHWA believes that these new standards will effectively and practically enhance highway safety and traffic operations by requiring and recommending the minimum use of center line and edge line markings throughout the nation for specific classes of streets and highways as defined by the standards. The typical road user's expectancies can be met through a nationally uniform and consistent application of these markings for warning, guidance, and delineation purposes in accordance with these standards.

The standards require the use of these markings for paved traveled ways of streets and highways with the highest traffic volumes and design standards in the nation. The standards also contain recommendations and information to support nationally uniform placing of markings on other roads.

Based on the information submitted to the FHWA, the FHWA believes that most of the required and recommended markings in accordance with these standards are currently in place. Generally, the markings have been provided by most jurisdictions as a result of good engineering practices, and in some cases, as a result of their own regulations and policies.

The new standards will help assure that all road jurisdictions provide at least the required minimum markings when applicable. This change will require some, mostly local, jurisdictions to provide the markings on some roads for the first time. The FHWA estimates that the additional costs nationwide to meet the new minimum requirements could total approximately $10 million to $20 million per year. Additional costs may be incurred at a jurisdiction's discretion if they place markings in accordance with the FHWA recommendations and information for markings. These costs, in most cases, are eligible for Federal or Federal-aid funding.

As discussed in the proposed rule, the FHWA initially proposed standards for which road locations would require a center line in FHWA Docket No. 87–21 in response to MUTCD Request III–35 (Change), ''Warrants for Center Line Pavement Markings.'' The FHWA terminated that docket on January 23, 1989, at 54 FR 2998 without change to the MUTCD and stated that it would consider alternative actions necessary to better determine standards responsive to the motorists' needs and to the concerns expressed in the docket comments. As a result, and pursuant to section 406 of the Department of Transportation and Related Agencies Appropriations Act, FY 1993, and other requests, the FHWA initiated MUTCD Request III–73 (Change), ''Standards for Center Line and Edge Line Markings.''

In response to this request, the FHWA published in Docket 96–15 on August 2, 1996, at 61 FR 40484, the proposed changes for the 1988 MUTCD.

In general, the public comments received for this docket indicated that the proposed standards would be too extensive in the number of additional roads required to be marked and in the associated costs.

Many commenters for this docket indicated that a proposed standard submitted by the National Committee on Uniform Traffic Control Devices (NCUTCD) and published with the proposed rule would reasonably fulfill the road user needs for markings while economically standardizing the current and proven marking practices of most road jurisdictions.

Subsequently, in Docket No. 96–47 on January 6, 1997, at 62 FR 691, the FHWA published proposed marking standards for a future edition of the MUTCD and included for public comment a different proposed standard that was similar to the proposed standard submitted by the NCUTCD in Docket 96-15. Therefore, in developing this final rule, the FHWA assessed public comments on the two differing proposed standards contained in Dockets 96–15 and 96–47.

An analysis of Docket 96–15 reveals that over half of the comments were opposed to the proposed amendment. In general, the comments stated that the warrants were too restrictive and/or too expensive. A similar analysis of Docket 96–47 reveals that less than ten percent of the comments stated that the warrants were too restrictive and/or too expensive.

This final rule promulgates marking standards that improve the safety of road users, while being responsive to the public comments submitted to the dockets. The proposed amendment was changed by adjusting the values for traveled way width and Average Daily Traffic (ADT) that is responsive to the public comments submitted to the dockets while still enhancing highway safety, traffic operations, and considering the costs to local jurisdictions.

This final rule also fulfills the requirements of section 406 of the Department of Transportation and Related Agencies Appropriations Act, FY 1993. The FHWA considers the number and width of lanes criteria required by section 406 to be satisfied by use of the traveled way width criteria in the standard because of the interrelations of these criteria as contained in road design standards used by most jurisdictions and referenced in the MUTCD.

For the proposed standard published August 2, 1996, in Docket No. 96–15, the 103 commenters submitted responses to the docket including 10 States, 32 counties, 46 municipalities, 6 consultants, 6 local government groups, 2 individuals, and 1 transportation group. Six commenters supported the entire proposed standard. The main issues and concerns discussed by most commenters who opposed the proposed standards included the establishing of required standards in lieu of recommended standards, the potential of additional costs, the need to clearly define the criteria, and the potential traffic and safety impacts. The FHWA believes that the various modifications to the proposed standards in preparing the standards herein adequately address and resolve the majority of commenter objections to the standards. The FHWA also believes that the final rule will enhance safety for highway users.

Many commenters opposed establishing the mandatory requirements within the MUTCD for the markings placement standards and preferred the use of recommendations. The primary reasons included reduction in a road jurisdiction's engineering judgment and their potential increases in liability in determining where limited markings resources should be best applied based on traffic and safety needs. Many were concerned that the requirements did not allow for engineering judgment when safety, traffic and resource considerations may determine the special needs for markings.

The final rule was modified to allow adjustments when an engineering study indicates the markings would cause potential safety hazards. Twenty-six commenters were concerned about the potential liability to the highway jurisdictions if some markings do not continuously meet the proposed new requirements. Another liability concern was the limited available engineering judgment for adjusting resources that may be inadequate to provide for the required as well as additionally critical marking needs.

The FHWA modified the criteria values to reduce the number of roads requiring markings, and to provide for more engineering judgment based on the State and local safety and traffic needs while still improving safety. The FHWA also addressed these concerns by adding a provision which allows engineering studies and engineering judgment to determine the marking requirements for safety issues. The FHWA believes that the minimum national requirements for the markings are needed pursuit to the requirements in section 406 and to help improve the uniform application of the markings on a national basis for the roads which can have the most substantial impacts on safety and traffic operations.

Many commenters were concerned about the potential additional costs, mostly for the local jurisdictions, associated with installing and maintaining the required markings, especially where no or minimal markings are currently in place. Most States currently provide the markings which would be required by the rule, but local jurisdictions vary in compliance. Originally, the FHWA estimated that the proposed requirements could have increased the marking costs nationwide by approximately $50 million to $100 million.

Twenty commenters indicated acceptance of the National Committee on Uniform Traffic Control Devices (NCUTCD) proposed standards which would reduce the number of roads requiring the markings and, therefore, reduce the required costs. The FHWA modified the requirements to reflect the NCUTCD criteria and added provisions

for increased engineering judgment in marking placement. The FHWA believes that these modifications will still improve the overall safety of the Nation's highways while mitigating the potential increased costs to State and local jurisdictions.

Some commenters were concerned with the cost of surveying the roads to determine where the markings would be required in each jurisdiction. The FHWA believes that jurisdictions should be aware of the ADT's and widths of the major roadways now specified in the standards and that the ADT's are an estimate that can be performed at a jurisdiction's judgment. Based on the traveled way widths and ADT's in this final rule the estimated costs are significantly reduced. The FHWA now estimates that the additional total cost nationwide to meet the new minimum requirements may total only $10 million to $20 million per year. These costs, in most cases, are eligible for Federal or Federal-aid funding at the jurisdictions' judgment and, therefore, these standards would not constitute an unfunded Federal mandate as mentioned by some commenters.

Many commenters requested the addition of definitions to help define the limits of the standards. Several commenters requested the definitions for the terms ''arterial,'' ''collector,'' ''urban,'' ''rural,'' and ''paved'' roads as contained in the standards. The terms may be defined by the road jurisdiction in accordance with MUTCD section 1A–9 until they are defined in the MUTCD. The FHWA is presently developing a notice of proposed rulemaking that will include these definitions.

The FHWA is currently considering, through a series of proposed rules, the addition of definitions for such terms in the future version of the MUTCD. The proposed definitions for the terms ''arterial highway,'' ''collector highway,'' and ''traveled way'' were published December 5, 1997, in Docket No. 97–3032 for potential inclusion in the future edition of the MUTCD. The other terms may be included in future proposed rules for the future edition of the MUTCD based on need and public requests. Example definitions which may be used for the terms in the marking standard contained herein are discussed in the ''Definitions'' section of this rulemaking.

One State commented that the terms ''urban'' and ''rural'' should not be defined in the MUTCD because various jurisdictions adequately, but differently, define these terms by statute, ordinance, or other regulation for the purposes of the marking standards. This final rule does not define ''rural'' and ''urban,'' but the terms are being defined as part of the MUTCD update.

Approximately fifty percent of the commenters recommended changing the criteria and/or their values within the marking standards. Approximately twenty five percent of the commenters regarding the center line criteria and twenty percent regarding the edge lines criteria proposed changing one or more of the proposed criteria for the average daily traffic (ADT) or the road width. The main reason for changing the criteria was to reduce costs and allow more engineering judgment. Thirty-five percent of the commenters recommended other types of criteria for marking installations, such as, engineering judgment, parking, curbs, speed, crash history, and pavement surface. These values may be added by the jurisdictions, but the FHWA believes the standards provide adequate and safety marking criteria based on the majority of public comments and studies. The FHWA modified the criteria values to reduce the number of roads that require the markings and added provisions for increased engineering judgment in marking placement.

The FHWA also changed the basis of the marking standard to use ''traveled way,'' as used in the NCUTCD and American Traffic Safety Services Association (ATSSA) proposals rather than ''roadway'' to eliminate the parking lanes from the width criteria issues discussed by many commenters in the width criteria. The FHWA chose to use ''traveled way'' instead of ''roadway'' because the AASHTO definition of ''roadway'' includes the shoulder, whereas the MUTCD definition does not.

Commenters also submitted several safety concerns related to the proposed requirements. Commenters indicated that using the term ''roadway'' rather than ''traveled way'' which was recommended in the NCUTCD and ATSSA proposed standards would necessitate the use of larger width criteria values to avoid potential unsafe traffic conflicts with vehicles in the parking lanes. The FHWA modified the requirements by basing the standards on traveled way width, which does not include the parking lanes, in place of roadway width.

The FHWA also added an engineering judgment provision which determines marking requirements for safety concerns, such as, the parking conflicts. Fifteen commenters indicated that the markings of some lower volume roads, such as, in residential areas, may cause increased speeds or additional traffic on these roads which could potentially reduce safety. They indicated that road users typically would expect and interpret the markings to indicate a major road and that residents typically resist such markings on their roads. Other commenters indicated that the types of crashes which occur at some locations, especially in municipalities, are not related to and would not be reduced by placing the markings.

The FHWA added a provision to allow engineering judgment for safety reasons which will assist jurisdictions in providing markings which improve safety. The FHWA also modified the proposed rule by increasing the traffic volume criteria values for roads requiring center lines to allow more engineering judgment on a larger number of lower volume roads.

The FHWA subsequently published a separate NPA on January 6, 1997, in FHWA Docket No. 97–47 including entire Part 3, Markings, for a proposed future version of the MUTCD. Based on the previous comments to Docket No. 96–15, the FHWA proposed alternative proposed standards, called Warrants, for center line and edge line markings that were similar to the proposed standards submitted by the NCUTCD for Docket No. 96–15.

Of the 32 commenters responding to the proposed Part 3, sixteen commenters discussed the alternative proposed standards for center line and edge line markings warrants. The commenters' main issues were similar to those submitted for Docket No. 96–15. Three commenters recommended the use of guidance rather than requirements. Four State DOT commenters discussed concern regarding additional cost and abilities of local jurisdictions to place and maintain additional required markings. Two commenters were concerned about the safe passing of parked vehicles when center line is in place on narrow roadways. Five commenters requested definitions for such terms as ''arterial,'' ''collector,'' ''urban,'' ''rural,'' ''paved,'' and ''refuge'' contained in the proposed standards. Five commenters discussed the criteria and criteria values, including one State DOT, that indicated that the local jurisdictions would meet the proposed standards. The issues raised by commenters in this docket were similar to issues submitted by commenters and appropriately addressed by FHWA as discussed above for Docket No. 96–15.

Rulemaking Analyses and Notices

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

The FHWA has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866 or significant within the meaning of Department of Transportation regulatory policies and procedures. It is anticipated that the economic impact of this rulemaking would be minimal. Based on the information submitted to the FHWA, the FHWA has concluded that most of the required marking and much of the recommended markings in accordance with these standards are currently in place as a result of common engineering practices and, in some cases, State and local jurisdiction regulations and policies. The new standards will help assure that all road jurisdictions provide at least the required minimum markings when applicable. This change will require some, mostly local, jurisdictions, to provide the markings on some roads for the first time. The FHWA estimates that the additional costs nationwide to meet the new minimum requirements could total approximately $10 million to $20 million per year. This is based on an average of 1000 to 2000 local jurisdictions needing some additional markings at an average cost of $20,000 per jurisdiction for markings with an average life cycle of 2 years. Additional costs may be incurred at a jurisdiction's judgment if they place markings in accordance with the FHWA recommendations for markings. These costs, in most cases, are eligible for Federal or Federal-aid funding at the jurisdictions' judgment. Therefore, a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the FHWA has evaluated the effects of this action on small entities, including small governments. This final rule may require the installation of some additional center line and edge line markings on roads in various jurisdictions. The FHWA estimates that the additional costs nationwide to meet the new minimum requirements could total approximately $10 million to $20 million per year. This is based on an average of 1000 to 2000 local jurisdictions needing some additional markings at an average cost of $20,000 per jurisdiction for markings with an average life cycle of 2 years. These costs, in most cases, are eligible for Federal or Federal-aid funding at the jurisdictions' judgment. Based on this evaluation, the FHWA hereby certifies that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 13132 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 dated August 4, 1999, and it has been determined that this action does not have a substantial direct effect or sufficient federalism implications on States that would limit the policymaking discretion of the States. Nothing in this document directly preempts any State law or regulation.

The MUTCD is incorporated by reference in 23 CFR part 655, subpart F, which requires that changes to the national standards issued by the FHWA shall be adopted by the States or other Federal agencies within two years of issuance. These amendments are in keeping with the Secretary of Transportation's authority under 23 U.S.C. 109(d), 315, and 402(a) to promulgate uniform guidelines to promote the safe and efficient use of the highway. To the extent that these amendments override any existing State requirements regarding traffic control devices, they do so in the interests of national uniformity.

Unfunded Mandates Reform Act of 1995

This rule does no impose a Federal mandate resulting in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. (2 U.S.C. 1531 *et seq.*).

Executive Order 12988 (Civil Justice reform)

This action meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, civil Justice Reform, minimize litigation, eliminate ambiguity, and reduce burden.

Executive Order 13045 (Protection of Children)

We have analyzed this action under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or safety that may disproportionately affect children.

Executive Order 12630 (Taking of Property)

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights

Executive Order 12372 (Intergovernmental Review)

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.

Paperwork Reduction Act

This action does not contain a collection of information requirement for purposes of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520.

National Environmental Policy Act

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

Regulation Identification Number

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

List of Subjects in 23 CFR Part 655

Design standards, Grant programs—transportation, Highways and roads, Incorporation by reference, Signs, and Traffic regulations.

The FHWA hereby amends chapter I of title 23, Code of Federal Regulations, part 655 as set forth below.

PART 655—TRAFFIC OPERATIONS

1. The authority citation for part 655 continues to read as follows:

Authority: 23 U.S.C. 109(d), 114(a), 315, and 402(a); and 49 CFR 1.48(b).

Subpart F—Traffic Control Devices on Federal-Aid and Other Streets and Highways

2. Revise § 655.601(a) to read as follows:

§ 655.601 Purpose.

* * * * *

(a) Manual on Uniform Traffic Control Devices for Streets and Highways (MUTCD), FHWA, 1988, including

Revision No. 1 dated January 17, 1990, Revision No. 2 dated March 17, 1992, Revision No. 3 dated September 3, 1993, Errata No. 1 to the 1988 MUTCD Revision 3, dated November 1, 1994, Revision No. 4 dated November 1, 1994, Revision No. 4a (modified) dated February 19, 1998, Revision No. 5 dated December 24, 1996, Revision No. 6 dated June 19, 1998, and Revision No. 7 dated January 3, 2000. This publication is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 and is on file at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC. The 1988 MUTCD, including Revision No. 3 dated September 3, 1993, may be purchased from the Superintendent of Documents, U.S. Government Printing Office (GPO), P.O. Box 371954, Pittsburgh, PA 15250–7954, Stock No. 650–001–00001–0. The amendments to the MUTCD titled, ''1988 MUTCD Revision No. 1,'' dated January 17, 1990, ''1988 MUTCD Revision No. 2,'' dated March 17, 1992, ''1988 MUTCD Revision No. 3,'' dated September 3, 1993, ''1988 MUTCD Errata No. 1 to Revision No. 3,'' dated November 1, 1994, ''1988 MUTCD Revision No. 4,'' dated November 1, 1994, ''1998 MUTCD Revision No. 5,'' dated December 24, 1996, ''Revision No. 6,'' dated June 19, 1998, and ''Revision No. 7'' dated January 3, 2000 are available from the Federal Highway Administration, Office of Transportation Operations, HOTO, 400 Seventh Street, SW., Washington, DC 20590. These documents are available for inspection and copying as prescribed in 49 CFR part 7.

* * * * *

Issued on: December 22, 1999.

Kenneth R. Wykle,

Federal Highway Administration.

[FR Doc. 99–33806 Filed 12–30–99; 8:45 am]

BILLING CODE 4910–22–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IL177–1a; FRL–6506–3]

Approval and Promulgation of Implementation Plan; Illinois

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving an Illinois State Implementation Plan (SIP) revision request affecting air permit rules, submitted on July 23, 1998. The submittal includes several ''clean up'' amendments to existing permitting rules. These amendments group similar rules together, and revise terms to be consistent with current vocabulary and usage. The State is planning to withdraw the portion of the original submittal that included rule amendments expanding the small source operating permit rules to also include stationary sources that emit 25 tons or more per year of any air contaminants and that are not subject to Title V or Federally Enforceable State Operating Permit (FESOP) requirements. Therefore, we are taking no action today on that portion of the submittal which is being withdrawn.

DATES: This rule is effective on March 3, 2000, unless EPA receives adverse written comments by February 2, 2000. If adverse written comment is received, EPA will publish a timely withdrawal of the rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments should be sent to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Copies of the revision request for this rulemaking action are available for inspection at the following address: U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. (It is recommended that you telephone Mark J. Palermo at (312) 886–6082 before visiting the Region 5 Office).

FOR FURTHER INFORMATION CONTACT: Lauren Steele, Environmental Engineer, at (312) 353–5069.

SUPPLEMENTARY INFORMATION: Throughout this document, wherever ''we,'' ''us,'' or ''our'' are used, we mean EPA. The supplemental information is organized in the following order:

I. What action is EPA proposing in this rulemaking?
II. The Clean Up amendments.
A. What are the Clean Up amendments to the Illinois permitting rules?
B. How do the Clean Up amendments affect the SIP and are the amendments approvable?
III. Where are the SIP revision rules codified?
IV. What public hearing opportunities were provided for this SIP revision?
V. Final Rulemaking Action.
VI. Administrative Requirements.
A. Executive Order 12866
B. Executive Order 13132
C. Executive Order 13045
D. Executive Order 13084
E. Regulatory Flexibility Act
F. Unfunded Mandates
G. Submission to Congress and the Comptroller General
H. National Technology Transfer and Advancement Act
I. Petitions for Judicial Review

I. What Action Is EPA Proposing in This Rulemaking?

We are approving Illinois' July 23, 1998, request to amend sections of their State Implementation Plan that deal with State air pollution permits, for purposes of ''cleaning up'' the language. This will provide consistency of word use, and easier readability of several passages.

II. The Clean Up Amendments

A. What Are the Clean Up Amendments to the Illinois Permitting Rules?

The Clean Up amendments change certain terms used in the regulatory language to update the text to current terminology used in State statutes and regulations. The Clean Up amendments also consolidate the provisions of several sections, and repeal duplicative sections and text. Certain clarifications to rule requirements have also been added to the permitting regulation. A more detailed description of the clean up revisions has been provided in the TSD for this rulemaking.

B. How Do the Clean Up Amendments Affect the SIP and Are the Amendments Approvable?

The Clean Up amendments make no substantive change to the permitting regulations, and are intended only to simplify the regulation text. Since the Clean Up amendments do not affect the stringency of the SIP, the amendments are approvable.

III. Where are the Rules for this SIP Revision Codified?

The SIP Revision includes:

(1) Amendments to the following sections of Part 201, Subpart D: Permit Applications and Review Process under 35 Ill. Adm. Code:

201.152 Contents of Application for Construction Permit,
201.157 Contents of Application for Operating Permit,
201.158 Incomplete Applications
201.159 Signatures
201.160 Standards of Issuance
201.162 Duration
201.163 Joint Construction and Operating Permits
201.164 Design Criteria

(2) Repeal of the following sections of subpart D:

201.153 Incomplete Applications
201.154 Signatures
201.155 Standards for Issuance

(3) Repeal of the entire Subpart E: Special Provisions for Operating Permits

for Certain Smaller Sources, specifically:

Section 201.180 Applicability
Section 201.181 Expiration and Renewal
Section 201.187 Requirements for a Revised Permit

(4) Amendments to the following section of Subpart F: CAAPP Permits:

Section 201.207 Applicability

The rules were published in the Illinois Register on June 19, 1998 (22 Ill. Reg. 11451). The effective date of the rules is June 23, 1998.

IV. What Public Hearing Opportunities Were Provided for this SIP Revision?

Public hearings were held on December 8, 1997, in Chicago, Illinois and on January 12, 1998, in Springfield, Illinois.

V. Final Rulemaking Action

In this rulemaking action, we approve the July 23, 1998, SIP revision which includes the Clean Up amendments to the permitting rules.

The EPA is publishing this action without prior proposal because EPA views this as a noncontroversial revision and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the EPA is proposing to approve the SIP revision should adverse written comments be filed. This action will be effective without further notice unless EPA receives relevant adverse written comment by February 2, 2000. Should the Agency receive such comments, it will publish a withdrawal of the final rule informing the public that this action will not take effect. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on March 3, 2000.

VI. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled ''Regulatory Planning and Review.''

B. Executive Order 13132

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Order 12612 (Federalism) and Executive Order 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that 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.'' Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This final rule 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, as specified in Executive Order 13132. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly affects 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 to the Office of Management and Budget, 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 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. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.,* v. *U.S.*

EPA, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

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

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

G. 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 the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not a ''major'' rule as defined by 5 U.S.C. 804(2).

H. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use ''voluntary consensus standards'' (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

I. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 3, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference.

Dated: December 1, 1999.

Jo Lynn Traub,

Acting Regional Administrator, Region 5.

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

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401 *et seq.*

Subpart O—Illinois

2. Section 52.720 is amended by adding paragraph (c)(151) to read as follows:

§ 52.720 Identification of plan.

* * * * *

(c) * * *

(151) On July 23, 1998, the State of Illinois submitted a State Implementation Plan (SIP) revision that included certain ''clean-up'' amendments to the State's permitting rules.

(i) Incorporation by reference.

Illinois Administrative Code, Title 35: Environmental Protection, Subtitle B: Air Pollution, Chapter I: Pollution Control Board.

(A) Subchapter a: Permits and General Provisions, Part 201: Permits and General Provisions.

(1) Subpart D: Permit Applications and Review Process, Section 201.152 Contents of Application for Construction Permit, 201.153 Incomplete Applications (Repealed), Section 201.154 Signatures (Repealed), Section 201.155 Standards for Issuance (Repealed), Section 201.157 Contents of Application for Operating Permit, Section 201.158 Incomplete Applications, Section 201.159 Signatures, 201.160 Standards for Issuance, Section 201.162 Duration, Section 201.163 Joint Construction and Operating Permits, and Section 201.164 Design Criteria. Amended at 22 Ill. Reg. 11451, effective June 23, 1998.

(2) Subpart E: Special Provisions for Operating Permits for Certain Smaller Sources, Section 201.180 Applicability (Repealed), Section 201.181 Expiration and Renewal (Repealed), Section 201.187 Requirement for a Revised Permit (Repealed), Repealed at 22 Ill. Reg. 11451, effective June 23, 1998.

(3) Subpart F: CAAPP Permits, Section 201.207 Applicability, Amended at 22 Ill. Reg. 11451, effective June 23, 1998.

[FR Doc. 99–33624 Filed 12–30–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MT–001–0016a; FRL–6506–1]

Clean Air Act Approval and Promulgation of Air Quality Implementation Plan Revision for Montana; Revisions to the Missoula County Air Quality Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA approves the State implementation plan (SIP) revisions submitted by the Governor of Montana with a letter dated November 14, 1997. This submittal consists of several revisions to Missoula County Air Quality Control Program regulations, which were adopted by the Montana Board of Environmental Review (MBER) on October 31, 1997. These rules include regulations regarding general definitions, open burning, and criminal penalties. This submittal also includes revisions to regulations regarding national standards of performance for new stationary sources (NSPS) and National Emission Standards for

Hazardous Air Pollutants (NESHAPs), which will be handled separately.

DATES: This direct final rule is effective on March 3, 2000 without further notice, unless EPA receives adverse comment by February 2, 2000. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Mail written comments to Richard R. Long, Director, Air and Radiation Program, Mailcode 8P–AR, Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado, 80202–2405. Documents relevant to this action can be perused during normal business hours at the Air and Radiation Program, Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado, 80202–2405. Copies of the incorporation by reference material are available at the Air and Radiation Docket and Information Center, Environmental Protection Agency, 401 M Street, SW, Washington, DC, 20460. Copies of the State documents relevant to this action are available at the Montana Department of Environmental Quality, 1520 E. 6th Avenue, Helena, Montana, 59620–0901.

FOR FURTHER INFORMATION CONTACT: Amy Platt, Environmental Protection Agency, Region VIII, (303) 312–6449.

SUPPLEMENTARY INFORMATION: Throughout this document wherever ''we'' is used it means EPA.

I. Background

The Missoula, Montana area was designated nonattainment for PM_{10} and classified as moderate under Sections 107(d)(4)(B) and 188(a) of the Clean Air Act, upon enactment of the Clean Air Act Amendments of 1990.[1] See 56 FR 56694 (Nov. 6, 1991); 40 CFR 81.327 (Missoula and vicinity). The air quality planning requirements for moderate PM_{10} nonattainment areas are set out in Subparts 1 and 4 of Part D, Title I of the Act. The EPA has issued a ''General Preamble'' describing EPA's preliminary views on how EPA intends to review SIPs and SIP revisions submitted under Title I of the Act, including those State submittals containing moderate PM_{10} nonattainment area SIP requirements (see generally 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992)).

Those States containing initial moderate PM_{10} nonattainment areas such as Missoula were required to submit, among other things, several provisions by November 15, 1991. These provisions are described in EPA's final rulemaking on the Missoula moderate PM_{10} nonattainment area SIP (59 FR 2537–2540, January 18, 1994).

EPA has approved subsequent revisions to the Missoula moderate PM_{10} SIP. On December 13, 1994 (59 FR 64133), EPA approved revisions to the Missoula County Air Pollution Control Program regulations related to, among other things, PM_{10} and CO contingency measures, inspections, emergency procedures, minor source construction permitting, open burning and wood waste burners. On August 30, 1995 (60 FR 45051), EPA approved revisions to the Missoula County Air Pollution Control Program regulations related to emergency procedures; the paving of roads, driveways, and parking lots; and solid fuel burning devices.

II. Analysis of State Submission

A. Procedural Background

The Act requires States to follow certain procedures in developing implementation plans and plan revisions for submission to EPA. Sections 110(a)(2) and 110(l) of the Act provide that each implementation plan a State submits must be adopted after reasonable notice and public hearing.

We also must determine whether a submittal is complete and therefore warrants further review and action (see section 110(k)(1) of the Act and 57 FR 13565). EPA's completeness criteria for SIP submittals can be found in 40 CFR part 51, appendix V. EPA attempts to determine completeness within 60 days of receiving a submission. However, the law considers a submittal complete if we don't determine completeness within six months after we receive it.

To provide for public comment, the Montana Board of Environmental Review (MBER), after providing adequate notice, held a public hearing on October 31, 1997 to address the amendments to the Missoula County air quality rules. Following the public hearing, the MBER approved the amendments, with a minor clarification to the definition of essential agricultural burning.

The Governor of Montana submitted the revisions to the Missoula County air quality rules to EPA with a letter dated November 14, 1997. The revisions were deemed complete as of May 14, 1998.

B. November 14, 1997 Revisions

As noted above, we will handle separately the revisions in the November 14, 1997 submittal regarding standards of performance for new stationary sources and emission standards for hazardous air pollutants. The revisions to the Missoula County air pollution control rules to be addressed in this document include revisions to general definitions, open burning, and changes to criminal penalties which involve the following sections of the Missoula County Air Quality Control Program: Chapter IX, Regulations, Standards and Permits, Subchapter 7, General Provisions and Subchapter 13 Open Burning; and Chapter XII, Criminal Penalties.

1. Revisions to Chapter IX, Regulations, Standards, and Permits

a. Subchapter 7, General Provisions, Rule 701—General Definitions: Revisions to this rule include the deletion of definitions for ''salvage operation,'' ''trade waste,'' and ''wood-waste burners.'' These definitions were added to the definitions section of the Missoula County open burning regulations (see subchapter 13 discussed below). This change was made to be consistent with the Montana statewide open burning definitions and is approvable.

b. Subchapter 13, Open Burning: The revisions to the open burning regulations were made, for the most part, to make the county rules consistent with state rules. Note that there are several places in the county rules that refer to rule 17.8.610, Major Open Burning Source Restrictions, of the Administrative Rules of Montana (ARM). This numbering is a recodification of the federally approved version of the ARM, in which the Major Open Burning Source Restrictions rule is numbered 16.8.1304. We will act on the ARM recodification at a later date.

In some cases, the Missoula County rules are more stringent than state rules. For example, the County rules require permits year-round for minor open burners. In addition, the allowed special burning period for essential agricultural open burning is shorter than that provided in the State regulations.

These revisions to Missoula County subchapter 13, Open Burning, are approvable.

2. Revisions to Chapter XII, Criminal Penalties

A revision was made to this chapter to increase the fine for a violation of the provisions, regulations, or rules of the Missoula County Air Quality Control

[1] The 1990 Amendments to the Clean Air Act made significant changes to the Act. See Public Law 101–549, 104 Stat. 2399. References herein are to the Clean Air Act, as amended (''the Act''). The Clean Air Act is codified, as amended, in the U.S. Code at 42 U.S.C. 7401, *et seq.*

Program. The fine was increased from $1,000 to $10,000 per day of violation. This revision is approvable.

III. Final Action

EPA is approving certain sections of Montana's SIP revision, as submitted by the Governor with a letter dated November 14, 1997. The revisions being approved involve the following rules and Chapters of the Missoula County Air Quality Control Program: Chapter IX, Rule 701, General Definitions; Chapter IX, Rules 1301–1311, regarding open burning; and Chapter XII, Criminal Penalties.

In addition, the November 14, 1997 submittal included revisions to regulations regarding standards of performance for new stationary sources and emission standards for hazardous air pollutants, which are being handled separately.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. The State requested this action. However, in the ''Proposed Rules'' section of today's **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments should be filed. This rule will be effective March 3, 2000 without further notice unless the Agency receives adverse comments by February 2, 2000. If the EPA receives adverse comments, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled ''Regulatory Planning and Review.''

B. Executive Order 13132

Executive Order 13132, entitled ''Federalism'' (64 FR 43225, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that 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.'' Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This final rule will not have substantial direct effects on the State, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Executive Order 13084: Consultation and Coordination with Indian Tribal Governments. Under Executive Order 13084, EPA may not issue a regulation that is not required by statue, that significantly affects 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, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, 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. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The

Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

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

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

G. 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 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 the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

H. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use ''voluntary consensus standards'' (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

I. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 3, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: November 30, 1999.

Max H. Dodson,

Acting Regional Administrator, Region VIII.

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

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401 *et seq.*

Subpart BB—Montana

2. Section 52.1370 is amended by adding paragraph (c)(48) to read as follows:

§ 52.1370 Identification of plan.

* * * * *

(c) * * *

(48) The Governor of Montana submitted revisions to the Missoula County Air Quality Control Program with a letter dated November 14, 1997. The revisions address general definitions, open burning, and criminal penalties.

(i) Incorporation by reference.

(A) Board order issued on October 31, 1997 by the Montana Board of Environmental Review approving the amendments to Missoula County Air Quality Control Program Chapters IX and XII regarding general definitions, open burning, and criminal penalties.

(B) Missoula County Air Quality Control Program, Chapter IX, Rule 701, General Definitions, effective October 31, 1997.

(C) Missoula County Air Quality Control Program, Chapter IX, Rules 1301–1311, regarding open burning, effective October 31, 1997.

(D) Missoula County Air Quality Control Program, Chapter XII, Criminal Penalties, effective October 31, 1997.

[FR Doc. 99–33622 Filed 12–30–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–6517–1]

National Oil and Hazardous Substances Pollution Contingency Plan List Update

AGENCY: Environmental Protection Agency.

ACTION: Notice of deletion of the PAB Oil and Chemical Services, Inc. Superfund Site from the National Priorities List (NPL).

SUMMARY: The Environmental Protection Agency (EPA) Region 6 announces the deletion of the PAB Oil and Chemical Services, Inc. Superfund Site (the ''Site'') located in Vermilion Parish, Louisiana from the National Priorities List (NPL). The NPL, promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, 42 U.S.C. 9605, is codified at Appendix B to the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR Part 300. With the concurrence of the State of Louisiana through the Louisiana Department of Environmental Quality (LDEQ), EPA has determined that responsible parties have implemented all appropriate response actions required at the Site. Moreover, EPA with the concurrence of the State of Louisiana through the LDEQ, has determined that Site investigations show that the Site now poses no significant threat to public health or the environment.

Consequently, pursuant to CERCLA Section 105, and 40 CFR 300.425(e), the Site is hereby deleted from the NPL.

EFFECTIVE DATE: January 3, 2000.

FOR FURTHER INFORMATION CONTACT: Caroline A. Ziegler, Remedial Project Manager, (214) 665–2178, United States Environmental Protection Agency, Region 6, Mail Code: 6SF–LP, 1445 Ross Avenue, Dallas, Texas 75202–2733. Information on the Site is available at the local information repository located at: Vermilion Parish Public Library, 200 N. Magdalen Square, Abbeville, Louisiana 70511, (318) 893–2674. Requests for comprehensive copies of documents should be directed formally to the Regional Superfund Management Branch, c/o Steve Wyman, (214) 665–2792, United States Environmental Protection Agency, Region 6, Mail Code: 6SF–PO, 1445 Ross Avenue, Dallas, Texas 75202–2733.

SUPPLEMENTARY INFORMATION: The site to be deleted from the NPL is the PAB Oil and Chemical Services, Inc. Superfund Site located near Abbeville in Vermilion Parish, Louisiana. A Notice of Intent to Delete for the Site was published August 31, 1999. The closing date for comments on the Notice of Intent to Delete was September 30, 1999. EPA received no comments and therefore no Responsiveness Summary was prepared.

The EPA identifies sites which present a significant risk to public health, welfare, or the environment and maintains the NPL as the list of those sites. Deletion of a site from the NPL does not affect responsible party liability or impede EPA efforts to recover costs associated with response efforts. Furthermore, § 300.425(e)(3) of the NCP, 40 CFR 300.425(e)(3), states that Fund-financed actions may be taken at sites deleted from the NPL in the unlikely event that conditions at the site warrant such action.

Lists of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: December 21, 1999.

Lynda F. Carroll,

Acting Regional Administrator, U.S. EPA Region 6.

For reasons set out in the preamble, 40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

1. The authority citation for part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p.351; E.O. 12580, 52 R 2923, 3 CFR, 1987 Comp., p.193.

Appendix B—[Amended]

2. Table 1 of Appendix B to Part 300 is amended by removing the site for PAB Oil & Chemical Service, Inc., Abbeville, Louisiana.

[FR Doc. 99–33952 Filed 12–30–99; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AF59

Endangered and Threatened Wildlife and Plants; Final Rule To List the Sierra Nevada Distinct Population Segment of the California Bighorn Sheep as Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), determine endangered status pursuant to the Endangered Species Act of 1973, as amended (Act) for the Sierra Nevada distinct population segment of California bighorn sheep (*Ovis canadensis californiana*). This species occupies the Sierra Nevada of California, where it is known from five disjunct subpopulations along the eastern escarpment of the Sierra Nevada, and thought to total no more than 125 animals. All five subpopulations are estimated to be very small and are threatened by mountain lion (*Felis concolor*) predation, disease, naturally occurring environmental events, and genetic problems associated with small population size. We emergency listed this population segment of California bighorn sheep on April 20, 1999. The emergency listing was effective for 240 days. Immediately upon publication, this action continues the protection provided by the temporary emergency listing.

DATES: This final rule is effective on January 3, 2000.

FOR FURTHER INFORMATION CONTACT: Carl Benz, at the U.S. Fish and Wildlife Service, Ventura Fish and Wildlife Office, 2493 Portola Rd. Suite B, Ventura, California 93003, (telephone 805/644–1766; facsimile 805/644–3958).

SUPPLEMENTARY INFORMATION:

Background

The bighorn sheep (*Ovis canadensis*) is a large mammal (family Bovidae) originally described by Shaw in 1804 (Wilson and Reeder 1993). Several subspecies of bighorn sheep have been recognized on the basis of geography and differences in skull measurements (Cowan 1940; Buechner 1960). These subspecies of bighorn sheep, as described in these early works, include *O. c. cremnobates* (Peninsular bighorn sheep), *O. c. nelsoni* (Nelson bighorn sheep), *O. c. mexicana* (Mexican bighorn sheep), *O. c. weemsi* (Weems bighorn sheep), *O. c. californiana* (California bighorn sheep), and *O. c. canadensis* (Rocky Mountain bighorn sheep). However, recent genetic studies question the validity of some of these subspecies and suggest a need to re-evaluate overall bighorn sheep taxonomy. For example, Sierra Nevada bighorn sheep appear to be more closely related to desert bighorn sheep than the *O. c. californiana* found in British Columbia (Ramey 1991, 1993). Regardless, the Sierra Nevada bighorn sheep meets our criteria for consideration as a distinct vertebrate population segment (as discussed below) and is treated as such in this final rule.

The historical range of the Sierra Nevada bighorn sheep (*Ovis canadensis californiana*) includes the eastern slope of the Sierra Nevada, and, for at least one subpopulation, a portion of the western slope, from Sonora Pass in Mono County south to Walker Pass in Kern County, a total distance of about 346 kilometers (km) (215 miles (mi)) (Jones 1950; Wehauser 1979, 1980). By the turn of the century, about 10 out of 20 subpopulations survived. The number dropped to five subpopulations at mid-century, and down to two subpopulations in the 1970s, near Mount Baxter and Mount Williamson in Inyo County (Wehauser 1979). Currently, five subpopulations of Sierra Nevada bighorn sheep occur, respectively, at Lee Vining Canyon, Wheeler Crest, Mount Baxter, Mount Williamson, and Mount Langley in Mono and Inyo Counties, three of which have been reintroduced using sheep obtained from the Mount Baxter subpopulation from 1979 to 1986 (Wehausen *et al.* 1987).

The Sierra Nevada bighorn sheep is similar in appearance to other desert associated bighorn sheep. The species' pelage shows a great deal of color variation, ranging from almost white to fairly dark brown, with a white rump. Males and females have permanent horns; the horns are massive and coiled

in males, and are smaller and not coiled in females (Jones 1950; Buechner 1960). As the animals age, their horns become rough and scarred, and will vary in color from yellowish-brown to dark brown. In comparison to many other desert bighorn sheep, the horns of the Sierra Nevada bighorn sheep are generally more divergent as they coil out from the base (Wehausen 1983). Adult male sheep stand up to 1 meter (m) (3 feet (ft)) tall at the shoulder; males weigh up to 99 kilograms (kg) (220 pounds (lbs)) and females 63 kg (140 lbs) (Buechner 1960).

The current and historical habitat of the Sierra Nevada bighorn sheep is almost entirely on public land managed by the U.S. Forest Service (FS), Bureau of Land Management (BLM), and National Park Service (NPS). The Sierra Nevada mountain range is located along the eastern boundary of California. Peaks vary in elevation from 1825 to 2425 m (6000 to 8000 ft) in the north, to over 4300 m (14,000 ft) in the south adjacent to Owens Valley, and then drop rapidly in elevation in the southern extreme end of the range (Wehausen 1980). Most precipitation, in the form of snow, occurs from October through April (Wehausen 1980).

Sierra Nevada bighorn sheep inhabit the alpine and subalpine zones during the summer, using open slopes where the land is rough, rocky, sparsely vegetated and characterized by steep slopes and canyons (Wehausen 1980; Sierra Nevada Bighorn Sheep Interagency Advisory Group (Advisory Group) 1997). Most of these sheep live between 3,050 and 4,270 m (10,000 and 14,000 ft) in elevation in summer (John Wehausen, University of California, White Mountain Research Station, pers. comm. 1999). In winter, they occupy high, windswept ridges, or migrate to the lower elevation sagebrush-steppe habitat as low as 1,460 m (4,800 ft) to escape deep winter snows and find more nutritious forage. Bighorn sheep tend to exhibit a preference for south-facing slopes in the winter (Wehausen 1980). Lambing areas are on safe precipitous rocky slopes. They prefer open terrain where they are better able to see predators. For these reasons, forests and thick brush usually are avoided if possible (J. Wehausen, pers. comm. 1999).

Bighorn sheep are primarily diurnal, and their daily activity shows some predictable patterns that consists of feeding and resting periods (Jones 1950). Bighorn sheep are primarily grazers; however, they may browse woody vegetation when it is growing and very nutritious. They are opportunistic feeders selecting the most nutritious diet from what is available. Plants consumed include varying mixtures of grasses, browse (shoots, twigs, and leaves of trees and shrubs), and herbaceous plants, depending on season and location (Wehausen 1980). In a study of the Mount Baxter and Mount Williamson subpopulations, Wehausen (1980) found that grass, mainly *Stipa speciosa* (perennial needlegrass), is the primary diet item in winter. As spring green-up progresses, the bighorn sheep shift from grass to a more varied browse diet, which includes *Ephedra viridis* (Mormon tea), *Eriogonum fasciculatum* (California buckwheat), and *Purshia* species (bitterbrush).

Sierra Nevada bighorn sheep are gregarious, with group size and composition varying with gender and from season to season. Spatial segregation of males and females occurs outside the mating season, with males more than 2 years old living apart from females and younger males for most of the year (Jones 1950; Cowan and Geist 1971; Wehausen 1980). Ewes generally remain in the same band into which they were born (Cowan and Geist 1971). During the winter, Sierra Nevada bighorn sheep concentrate in those areas suitable for wintering, preferably Great Basin habitat (sagebrush-steppe) at the very base of the eastern escarpment. Subpopulation size can number more than 100 sheep, including rams (this was observed at a time when the population size was larger than it is currently) (J. Wehausen, pers. comm. 1999). Breeding takes place in the fall, generally in November (Cowan and Geist 1971). Single births are the norm for North American wild sheep, but twinning is known to occur (Wehausen 1980). Gestation is about 6 months (Cowan and Geist 1971).

Lambing occurs between late April to early July, with most lambs born in May or June (Wehausen 1980, 1996). Ewes with newborn lambs live solitarily for a short period before joining nursery groups that average about six sheep. Ewes and lambs frequently occupy steep terrain that provides a diversity of slopes and exposures for escape cover. Lambs are precocious, and within a day or so, climb almost as well as the ewes. Lambs are able to eat vegetation within 2 weeks of their birth and are weaned between 1 and 7 months of age. By their second spring, they are independent of their mothers. Female lambs stay with ewes indefinitely and may attain sexual maturity during the second year of life. Male lambs, depending upon physical condition, may also attain sexual maturity during the second year of life (Cowan and Geist 1971). Average lifespan is 9 to 11 years in both sexes, though some rams are known to have lived to 12 to 14 years old (Cowan and Geist 1971; Wehausen 1980).

Distinct Vertebrate Population Segment

Recent analyses of bighorn sheep genetics and morphometrics (*e.g.,* size and shape of body parts) suggest reevaluation of the taxonomy of Sierra Nevada bighorn sheep (*Ovis canadensis californiana*) is necessary (Ramey 1991, 1993, 1995; Wehausen and Ramey 1993; Wehausen and Ramey 2000 (in review)). A recent analysis of the taxonomy of bighorn sheep using morphometrics and genetics failed to support the current taxonomy (Ramey 1993, 1995; Wehausen and Ramey 1993; Wehausen and Ramey 2000 (in review)). This and other research (Ramey 1993) supports taxonomic distinction of the Sierra Nevada bighorn sheep relative to other nearby regions.

The biological evidence supports recognition of Sierra Nevada bighorn sheep as a distinct vertebrate population segment for purposes of listing, as defined in our February 7, 1996, Policy Regarding the Recognition of Distinct Vertebrate Population Segments (61 FR 4722). The definition of ''species'' in section 3(16) of the Act includes ''any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature.'' For a population to be listed under the Act as a distinct vertebrate population segment, three elements are considered—1) the discreteness of the population segment in relation to the remainder of the species to which it belongs; 2) the significance of the population segment to the species to which it belongs; and 3) the population segment's conservation status in relation to the Act's standards for listing (*i.e.,* is the population segment, when treated as if it were a species, endangered or threatened?) (61 FR 4722).

The distinct population segment (DPS) of bighorn sheep in the Sierra Nevada is discrete in relation to the remainder of the species as a whole. This DPS is geographically isolated and separate from other California bighorn sheep populations. There is no mixing of Sierra Nevada bighorn sheep with other bighorn sheep subspecies. This is supported by an evaluation of the population's genetic variability and morphometric analysis of skull and horn variation (Ramey 1993, 1995; Wehausen and Ramey 1993, 1994; Wehausen and Ramey 2000 (in review)). Sierra Nevada bighorn sheep males have particularly wide skulls but small horns, compared to other subspecies of bighorn sheep (Wehausen and Ramey 2000 (in review)). Also, Sierra Nevada bighorn

sheep have a unique mitochondrial DNA pattern, different from other bighorn sheep populations (Ramey 1993, 1995). Mitochondrial DNA are genes that are inherited maternally in animals, and so are useful as genetic markers when researching population genetic questions (Ramey 1993). Researchers suggest that all other populations of *Ovis canadensis californiana* be reassigned to other subspecies, leaving *O. c. californiana* (*i.e.,* the subspecies found within the DPS that is the subject of this rule) only in the central and southern Sierra Nevada (Ramey 1993, 1995; Wehausen and Ramey 1993, 1994; Wehausen and Ramey 2000 (in review)).

The Sierra Nevada bighorn sheep DPS is biologically and ecologically significant to the species in that it constitutes the only population of California bighorn sheep inhabiting the Sierra Nevada. This DPS extends from Sonora Pass to Walker Pass, spanning approximately 346 km (215 mi) of contiguous suitable habitat in the United States. It is likely that there was gene flow in the past between bighorn sheep populations in the Sierra Nevada Mountains (*Ovis canadensis californiana*) and the White-Inyo Mountains (*O. c. nelsoni*), which are separated by Owens Valley (Ramey 1993, 1995). Genetic research indicates, however, that there are differences between the bighorn sheep populations in the Sierra Nevada and those in the White-Inyo Mountains (Ramey 1991, 1993, 1995). Any dispersal that occurred between the two mountain ranges was likely by males since female bighorn sheep have a much lower rate of dispersal, probably due to the females not wanting to expose themselves or their lambs to predation by crossing the open terrain of Owens Valley (Ramey 1995). Movement between the populations apparently no longer occurs due to artificial barriers such as canals, highways, and fences (Jones 1950; Ramey 1993, 1995). Sierra Nevada bighorn sheep also have different morphological features, and they are genetically different from other bighorn populations (Ramey 1991, 1993, 1995; Wehausen and Ramey 1993, 1994; Wehausen and Ramey 2000 (in review)). The loss of Sierra Nevada bighorn sheep would result in the total extirpation of bighorn sheep from the Sierra Nevada in California. The loss of Sierra Nevada bighorn sheep in the Sierra Nevada mountain range would also create a significant gap in bighorn sheep population distribution. The Sierra Nevada bighorn sheep are the most northern population of bighorn in California, with the closest population to the north being at Hart Mountain in Oregon (Jinelle, O'Connor, Lassen National Forest, pers. comm. 1999), and the closest population to the south and east being the White-Inyo Mountain bighorn populations. The loss of the Sierra Nevada bighorn sheep would further isolate bighorn sheep populations in Oregon from those in southern California.

Status and Distribution

Historically, Sierra Nevada bighorn sheep populations occurred along and east of the Sierra Nevada crest from Sonora Pass (Mono County) south to Walker Pass (Olancha Peak) (Kern County) (Jones 1950; Wehausen 1979). Sheep apparently occurred wherever appropriate rocky terrain and winter range existed. With some exceptions, most of the populations wintered on the east side of the Sierra Nevada and spent summers near the crest (Wehausen 1979).

Subpopulations of Sierra Nevada bighorn sheep probably began declining with the influx of gold miners to the Sierra Nevada in the mid-1880s, and those losses have continued through the 1900s (Wehausen 1988). By the 1970s, only two subpopulations of Sierra Nevada bighorn sheep, those near Mount Baxter and Mount Williamson in Inyo County, are known to have survived (Wehausen 1979). Specific causes for the declines are unknown. Market hunting may have been a contributing factor as evidenced by menus from historic mining towns such as Bodie, which included bighorn sheep (Advisory Group 1997). However, with the introduction of domestic sheep in the 1860s and 1870s, wild sheep are known to have died in large numbers in several areas from disease contracted from domestic livestock (Jones 1950; Buechner 1960). Large numbers of domestic sheep were grazed seasonally in the Owens Valley and Sierra Nevada prior to the turn of the century (Wehausen 1988), and disease is believed to be the factor most responsible for the disappearance of bighorn subpopulations in the Sierra Nevada. Jones (1950) suggested that scabies were responsible for a die-off in the 1870s on the Great Western Divide. Experiments have confirmed that bacterial pneumonia (*teurella*ecies), carried normally by domestic sheep, can be fatal to bighorn sheep (Foreyt and Jessup 1982).

In 1971, the Sierra Nevada bighorn sheep was listed as threatened under the 1970 California Endangered Species Act (California Department of Fish and Game 1974, as cited by Advisory Group 1997; California Department of Fish and Game 1999). This classification led to the development and implementation of a State recovery plan, which has two main goals: (1) create at least two additional populations numbering at least 100 sheep that could serve as reintroduction stock in the event of a catastrophic decline in the Mount Baxter subpopulation, and (2) re-establish the sheep throughout historic ranges in the Sierra Nevada where biologically and politically feasible (Advisory Group 1997). Intensive field studies began in 1975 which provided accurate census data for the two surviving subpopulations. In 1979, re-introductions of sheep into historical habitat (also known as the restoration program) began and was conducted by several Federal and State agencies from 1979 to 1988 (Advisory Group 1997). By 1979, only 220 sheep were known to exist in the Mount Baxter subpopulation, and 30 in the Mount Williamson subpopulation (Wehausen 1979). Sheep were obtained from the Mount Baxter subpopulation and transplanted to three historic locations, which were Lee Vining Canyon, Wheeler Crest, and Mount Langley (Wehausen 1996; Advisory Group 1997). Consequently, Sierra Nevada bighorn sheep now occur in five subpopulations in Mono and Inyo Counties : Lee Vining Canyon, Wheeler Crest, Mount Baxter, Mount Williamson, and Mount Langley. The Sierra Nevada bighorn sheep population reached a high of about 310 in 1985–86, but subsequent population surveys have documented a declining trend (J. Wehausen, pers. comm. 1999). Currently, it is estimated that the total Sierra Nevada bighorn sheep population is 125 animals (J. Wehausen, pers. comm. 1999).

The following table best represents the total Sierra Nevada bighorn sheep population over various time periods. These totals represent the numbers of sheep emerging from winter in each of these years, and best documents the status of the population by incorporating winter mortality, especially of lambs born the previous year. These totals are not absolute values; numbers have been rounded to the nearest five (J. Wehausen, pers. comm. 1999). The continuing decline of the Sierra Nevada bighorn sheep has been attributed to a combination of the direct and indirect effects of predation (Wehausen 1996).

TABLE 1.—SIERRA NEVADA BIGHORN SHEEP POPULATION NUMBERS, BY YEAR (J. WEHAUSEN, PERS. COMM. 1999)

Year	Number of populations	Total sheep
1978	2	250
1985	4	310
1995	5	100
1996	5	110
1997	5	130
1998	5	100
1999	5	*125

*Note that the difference in population size between 1998 and 1999 is based on (1) a small band of bighorn sheep were located in Sand Mountain (Mount Baxter subpopulation), and (2) approximately 15 lambs were born to the Wheeler Crest subpopulation in 1999.

Previous Federal Action

In our September 18, 1985, Notice of Review, we designated the Sierra Nevada bighorn sheep as a category 2 candidate and solicited status information (50 FR 37958). Category 2 candidate species included taxa for which we had information indicating that proposing to list as endangered or threatened was possibly appropriate, but for which sufficient data on biological vulnerability and threats were not currently available to support a proposed rule. Category 1 candidates were those species for which we had sufficient information on file to support issuance of proposed listing rules. In our January 6, 1989 (54 FR 554), and November 21, 1991 (56 FR 58804), Notices of Review, we retained the Sierra Nevada bighorn sheep in category 2. Beginning with our February 28, 1996, Notice of Review (61 FR 235), we discontinued the designation of multiple categories of candidates, and we now consider only species that meet the definition of former category 1 as candidates for listing. At that point, the Sierra Nevada bighorn sheep was not identified as a candidate.

On February 12, 1999, we received a petition dated February 9, 1999, from the Friends of the Inyo, National Parks and Conservation Association, Natural Resources Defense Council, Sierra Nevada Bighorn Sheep Foundation, and The Wilderness Society, to list the Sierra Nevada bighorn sheep as endangered throughout its range, with a special request for an emergency listing under the Act. The petition provided information on the species' classification and biology, past and present conservation efforts, historic and current distribution, population trends, and threats facing this species, including small population effects, disease, predation and habitat curtailment, fire, and inadequacy of existing regulations.

On April 20, 1999, we published an emergency rule to list the Sierra Nevada distinct population segment of California bighorn sheep as endangered (64 FR 19300), as well as a proposed rule (64 FR 19333) to list the species as endangered on that same date.

The processing of this final rule conforms with our listing priority guidance published in the **Federal Register** on October 22, 1999 (64 FR 57114). Highest priority is processing emergency listing rules for any species determined to face a significant and imminent risk to its well being (Priority 1). Second priority (Priority 2) is processing final determinations on proposed additions to the Federal lists of endangered and threatened wildlife and plants. Third priority is processing new proposals to add species to the lists. The processing of administrative petition findings (petitions filed under section 4 of the Act) is fourth priority. The processing of critical habitat determinations (prudency and determinability decisions) and proposed and final designations of critical habitat will no longer be subject to prioritization under the listing priority guidance. This final rule is a Priority 2 action and is being completed in accordance with the current listing priority guidance. We have updated this rule to reflect any changes in information concerning distribution, status, and threats since publication of the proposed rule.

Summary of Comments and Recommendations

In the April 20, 1999, proposed rule (64 FR 19333), we requested all interested parties to submit factual reports or information that might contribute to development of a final rule. A 60-day comment period closed on June 21, 1999. We contacted appropriate Federal agencies, State agencies, county and city governments, scientific organizations, and other interested parties and requested comments. We published public notices of the proposed rule in the *Inyo Register* in Inyo County and *Fresno Bee* in Fresno County on May 8, 1999, and in the *Mammoth Times* in Mono County on May 13, 1999, which invited general public comment. We did not receive any requests for a public hearing. We re-opened the comment period on September 30, 1999, at the request of the Foundation for North American Wild Sheep and to solicit a peer review of the proposed rule. The comment period ended on October 15, 1999.

During the public comment period, we received written comments from 39 individuals or organizations, with one commenter submitting comments during both comment periods. All but two commenters supported the listing of the Sierra Nevada bighorn sheep. One commenter sent a letter refuting some information presented to us by another commenter. Issues, and our response to each, are summarized below.

Issue 1: One commenter requested that we recognize a long-term ecosystem approach for recovery that includes healthy predator/prey relations.

Our Response: We agree that recovery should be based on restoring, to the greatest extent possible, the ecosystem such that the natural dynamics of predator/prey relationships function with minimal or no human intervention. We recognize this in the rule, and the actual goals and tasks necessary to achieve recovery of the species will be discussed in detail in the Sierra Nevada bighorn sheep recovery plan.

Issue 2: Two commenters asked that we designate critical habitat for the Sierra Nevada bighorn sheep.

Our Response: In the emergency rule, we indicated that designation of critical habitat was not determinable for the Sierra Nevada bighorn sheep due to a lack of information sufficient to perform the required analysis of impacts of the designation. As discussed below in the critical habitat section, we have re-examined the question of whether critical habitat is not determinable and have determined that there is sufficient information to do the required analysis and that designation of critical habitat for the species is prudent.

As explained in detail in the Final Listing Priority Guidance for FY 2000 (64 FR 57114), our listing budget is currently insufficient to allow us to immediately complete all of the listing actions required by the Act. We will defer critical habitat designation for the Sierra Nevada bighorn sheep in order to allow us to concentrate our limited resources on higher priority critical habitat (including court-ordered designations) and other listing actions, while allowing us to put in place protections needed for the conservation of the Sierra Nevada bighorn sheep without further delay.

We plan to employ a priority system for deciding which outstanding critical habitat designations should be addressed first. We will focus our efforts on those designations that will provide the most conservation benefit, taking into consideration the efficacy of critical habitat designation in addressing the threats to the species, and the magnitude and immediacy of those

threats. We will develop a proposal to designate critical habitat for the Sierra Nevada bighorn sheep as soon as feasible, considering our workload priorities.

Issue 3: Several commenters stated that we should require other Federal agencies to utilize their authorities to eliminate grazing permits on Federal land, and initiate formal consultation under section 7 of the Act.

Our Response: Upon emergency listing of the Sierra Nevada bighorn sheep, we notified all Federal agencies of this listing and their responsibilities under section 7 of the Act to consult with us on actions that may affect the Sierra Nevada bighorn sheep. During the emergency listing period, the FS consulted on their actions for permitting domestic sheep grazing, conducting prescribed burns to enhance bighorn sheep winter habitat, as well as removing wreckage from a crashed airplane in bighorn sheep habitat. With the final listing of this species, we will continue to expect Federal agencies to comply with section 7 of the Act and consult with us, and we will work with these Federal agencies, as well as State agencies, to reduce threats to the species.

Issue 4: One commenter requested that we clarify our policies and procedures on deterrence and removal of Sierra Nevada bighorn sheep predators, and that the final rule should include clear guidelines for how we will manage predators.

Our Response: In accordance with our Interagency Cooperative Policy on Recovery Plan Participation and Implementation Under the Endangered Species Act (July 1, 1994; 59 FR 34272), and our recovery guidelines, we will develop a recovery plan that is ecosystem-based, and clearly identify quantifiable recovery criteria and goals, and we will clearly identify those management actions necessary to achieve recovery of the species.

Issue 5: One commenter stated that we should conduct studies to examine biological effects of differential removal of mountain lions on the Sierra Nevada bighorn sheep.

Our Response: We agree that this should be an important goal of recovery efforts. In addition to specific management actions, specific research aimed at better understanding the species and ecosystem (*e.g.,* predator/prey relationships, population demography) will be identified in the recovery plan.

Issue 6: One commenter stated that Federal listing is no longer warranted because: 1) Assembly Bill (A. B.) 560 was recently signed into State law providing the California Department of Fish and Game (CDFG) to remove or take mountain lions that are perceived to be a threat to the sheep; (2) CDFG was appropriated State funds for the recovery of the Sierra Nevada bighorn sheep; and (3) Federal agencies and the Los Angeles Department of Water and Power have demonstrated good faith efforts at reducing the likelihood of contact between domestic sheep and the Sierra Nevada bighorn sheep.

Our Response: We disagree. In evaluating the need for listing, we must look at a variety of factors affecting the species. This DPS of California bighorn sheep meets the definition of an endangered species based on several factors, only one of which is mountain lion predation. We agree that the passage and signing into law of A. B. 560 provides an additional ability to protect the Sierra Nevada bighorn sheep from mountain lions, as well as funds for recovery efforts. However, while this law will reduce the threat from mountain lion predation, it will not completely eliminate it. In addition, this legislation was enacted very recently, in September of 1999, and little time has passed to allow an evaluation of its effectiveness. We also agree that the CDFG was appropriated funds for the recovery of the species, however, these funds do not mean that all of the threats to the species have been removed such that listing is unnecessary. We also agree that the Federal agencies and Los Angeles Department of Water and Power have demonstrated good faith efforts at reducing the likelihood of contact between domestic and wild sheep. However, these efforts have come about due to the emergency listing and the subsequent requirement that Federal agencies must consult with us to ensure that their actions do not jeopardize the continued existence of the species.

Peer Review

In accordance with our July 1, 1994, Interagency Cooperative Policy for Peer Review in Endangered Species Act Activities (59 FR 34270), we solicited the expert opinions of three independent specialists regarding pertinent scientific or commercial data and assumptions relating to bighorn sheep ecology, predator/prey relationships, and disease considered in the proposed rule (64 FR 19333). The purpose of such a review is to ensure that listing decisions are based on scientifically sound data, assumptions, and analyses, including input from appropriate experts. All three reviewers sent us a letter during the public comment period supporting the listing of the Sierra Nevada bighorn sheep. One of the three provided additional documentation on disease threats to bighorn sheep from domestic sheep; another provided conservation and recovery recommendations. Information and suggestions provided by the reviewers were considered in developing this final rule, and incorporated where applicable.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, we have determined that the Sierra Nevada bighorn sheep DPS warrants classification as an endangered species. We followed procedures found at section 4 of the Act and regulations (50 CFR part 424) issued to implement the listing provisions of the Act. We determine a species to be endangered or threatened due to one or more of the five factors described in section 4(a)(1). These factors, and their application to the Sierra Nevada bighorn sheep DPS (*Ovis canadensis californiana*), are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Habitat throughout the historic range of Sierra Nevada bighorn sheep remains essentially intact; the habitat is neither fragmented nor degraded. However, by 1900, about half of the Sierra Nevada bighorn sheep populations were lost, most likely because of the introduction of diseases by domestic livestock, and illegal hunting (Advisory Group 1997). Beginning in 1979, animals from the Mount Baxter subpopulation were translocated to reestablish subpopulations in Lee Vining Canyon, Wheeler Crest, and Mount Langley in Mono and Inyo Counties in order to re-establish the species in historical habitat (Advisory Group 1997). Currently, Sierra Nevada bighorn sheep are limited to five subpopulations. Almost all of the historical and current habitat is administered by either the FS, BLM, or NPS, though there are some small parcels of inholdings within the species' range which are owned by the Los Angeles Department of Water and Power. Also, there are some patented mining claims in bighorn sheep habitat, but the total acreage is small.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

During the period of the California gold rush (starting about 1849), hunting to supply food for mining towns may have played a role in the decline of the population (Wehausen 1988). Besides

being sought as food, Sierra Nevada bighorn sheep were also killed by sheepmen who considered the species competition for forage with domestic sheep. The decimation of several wildlife species in the late 1800s prompted California to pass legislation providing protection to several species including bighorn sheep (Jones 1950; Wehausen 1979).

Commercial and recreational hunting of Sierra Nevada bighorn sheep is not permitted under State law. There is no evidence that other commercial, recreational, scientific, or educational activities are currently a threat. Poaching does not appear to be a problem at this time.

C. Disease or Predation

Disease is believed to have been the major contributing factor responsible for the precipitous decline of Sierra Nevada bighorn sheep starting in the late 1800s (Foreyt and Jessup 1982).

Bighorn sheep are host to a number of internal and external parasites, including ticks, lice, mites, tapeworms, roundworms, and lungworms. Most of the time, parasites are present in relatively low numbers and have little effect on individual sheep and populations (Cowan and Geist 1971).

Cattle were first introduced into the Sierra Nevada in 1860s but were replaced with domestic sheep that could graze more extensively over the rugged terrain (Wehausen *et al.* 1987; Wehausen 1988). Large numbers of domestic sheep were grazed seasonally in the Sierra Nevada prior to the turn of the century, and the domestic sheep would use the same ranges as the wild sheep, occasionally coming into direct contact with them. Both domestic sheep and cattle can act as disease reservoirs. Scabies, most likely contracted from domestic sheep, caused a major decline of bighorn sheep in California in the 1870s to the 1890s, and caused catastrophic die-offs in other parts of their range (Buechner 1960). A die-off of bighorn sheep in the 1870s on the Great Western Divide (Mineral King area of Sequoia National Park) was attributed to scabies, presumably contracted from domestic sheep (Jones 1950).

Die-offs from pneumonia contracted from domestic sheep is another important cause of losses. In 1988, a strain of pneumonia, apparently contracted from domestic sheep, wiped out the reintroduced South Warner Mountains herd of bighorn sheep (David A. Jessup, CDFG, *in litt. 1999).* These bighorn sheep, which included Sierra Nevada bighorn sheep, died of fibrinopurulent bronchopneumonia, caused by a virulent strain of *Pasteurella* species bacteria. Domestic sheep had been observed running with the bighorn prior to this outbreak (D. Jessup, *in litt.* 1999). Native bighorn sheep cannot tolerate strains of respiratory bacteria such as *Pasteurella* species, carried normally by domestic sheep, and close contact with domestic animals results in transmission of disease and subsequent deaths of the exposed animals (Foreyt and Jessup 1982). Similar die-offs of bighorn sheep populations have occurred elsewhere, such as in Lava Beds National Monument, California, and in Gerlach, Nevada, where it was documented that domestic sheep came into contact with wild sheep (Foreyt and Jessup 1982; D.A. Jessup, *in litt.* 1999).

Bighorn sheep can also develop pneumonia independent of contact with domestic sheep. Lungworms of the genus *Protostrongylus* are often an important contributor to the pneumonia disease process in some situations (J. Wehausen, pers. comm. 1999). Lungworms are carried by an intermediate host snail, which is ingested by a sheep as it is grazing. Lungworm often exists in a population without causing a problem. However, if the sheep are stressed in some way, they may develop bacterial pneumonia, which is complicated by lungworm infestation. Bacterial pneumonia is usually a sign of weakness caused by some other agent such as a virus, parasite, poor nutrition, predation, human disturbance, or environmental or behavioral stress that lowers the animal's resistence to disease (Wehausen 1979; Foreyt and Jessup 1982). Bighorn sheep in the Sierra Nevada carry *Protostrongylus* species (lungworms), but the parasite loads have been low, and there has been no evidence of any clinical signs of disease or disease transmission (Wehausen 1979; Richard Perloff, Inyo National Forest, pers. comm. 1999).

Currently, domestic sheep grazing allotments are permitted by the FS in areas adjacent to Sierra Nevada bighorn sheep subpopulations. Domestic sheep occasionally escape the allotments and wander into bighorn sheep areas, sometimes coming into direct contact with bighorn sheep (Advisory Group 1997). For example, in 1995, 22 domestic sheep that were permitted on FS land wandered away from the main band and were later found in Yosemite National Park, after crossing through occupied bighorn sheep habitat (Advisory Group 1997; Bonny Pritchard, Inyo National Forest, pers. comm. 1999; R. Perloff, pers. comm. 1999). Other stray domestic sheep, in smaller numbers, have been known to wander up the road in Lee Vining Canyon into bighorn sheep habitat (B. Pritchard, pers. comm. 1999). Based on available information, and given the susceptibility of bighorn sheep to introduced pathogens, disease will continue to pose a significant and underlying threat to the survival of Sierra Nevada bighorn sheep until the potential for contact with domestic sheep is eliminated.

Predators such as coyote (*Canis latrans*), bobcat (*Lynx rufus*), mountain lion, gray fox (*Urocyon cinereoargenteus*), golden eagle (*Aquila chrysaetos*), and free-roaming domestic dogs prey upon bighorn sheep (Jones 1950; Cowan and Geist 1971). Predation generally has an insignificant effect except on small populations such as the Sierra Nevada bighorn sheep. Coyotes are the most abundant large predator sympatric (occurring in the same area) with bighorn sheep populations (Bleich 1999), and are known to have killed young Sierra Nevada bighorn sheep (Vernon Bleich, CDFG, pers. comm. 1999). In the late 1980s, mountain lion predation of Sierra Nevada bighorn sheep increased throughout their range (Wehausen 1996). This trend has continued into the 1990s, as evidenced by Table 1.

Predation by mountain lions probably was a natural occurrence and part of the natural balance of this ecosystem. From 1907 to 1963, the State provided a bounty on mountain lions; the State also hired professional lion hunters for many years. The bounty most likely kept the mountain lion population reduced such that bighorn sheep predation was rare and insignificant. Between 1963 and 1968, mountain lions were managed as a nongame and nonprotected mammal, and take was not regulated. From 1969 to 1972, lions were re-classified as game animals. A moratorium on mountain lion hunting began in 1972 and lion numbers likely increased. In 1986, the species was again classified as a game animal, but CDFG hunting recommendations were challenged in court in 1987 and 1988 (Tories et al. 1996). In 1990, a State-wide ballot initiative (Proposition 117) passed into law prohibiting the killing of mountain lions except if humans, or their pets or livestock are threatened. Another ballot measure, Proposition 197, which would have modified current law regarding mountain lion management failed to pass in 1996, largely because of the public's concern that the change may allow mountain lion hunting (Tories *et al.* 1996). With the removal of the ability to control the mountain lion population, lion predation became a significant

limiting factor on Sierra Nevada bighorn sheep.

The increased presence of mountain lions appears to have changed Sierra Nevada bighorn sheep winter habitat use patterns. Wehausen (1996) looked at mountain lion predation in two bighorn sheep subpopulations, one in the Granite Mountains of the eastern Mojave Desert, and the other in the Mount Baxter subpopulation in the Sierra Nevada. He found that the lions reduced the subpopulation in the Granite Mountains to eight ewes between 1989 and 1991, and held it at that level for 3 years, after which lion predation decreased and the bighorn sheep subpopulation increased at 15 percent per year for 3 years. All the mortality in that subpopulation was attributed to mountain lion predation. The Mount Baxter bighorn sheep subpopulation abandoned its winter ranges, presumably due to mountain lion predation. Forty-nine sheep were killed by lions on their winter range between 1976 and 1988 out of an average subpopulation size of 127 sheep. These mortalities from mountain lion predation represented 80 percent of all mortality on the winter range, and 71 percent for all ranges used. Evidence also indicates that many of the bighorn sheep killed were prime-aged animals (J. Wehausen, pers. comm. 1999).

The bighorn sheep on Mount Baxter may have moved to higher elevations to evade lions. By avoiding the lower terrain and consequently the higher quality forage present during the spring, sheep emerged from the winter months in poorer condition. Consequences from the change in habitat use resulted in a decline in the Baxter subpopulation due to decreased lamb survival, because lambs were born later and died in higher elevations during the winter. This may have also been the case with the Lee Vining subpopulation decline; bighorn sheep may have run out of fat reserves at a time when they should have been replenishing their reserves with highly nutritious forage from low elevation winter ranges. We believe that because of the winter habitat shift by the bighorn sheep, the Mount Baxter subpopulation has declined significantly. With the large decline of bighorn sheep on Mount Baxter, the total population of Sierra Nevada bighorn sheep has now dropped below what existed during implementation of the restoration program between 1979 and 1988 (Wehausen 1996; Advisory Group 1997), which transplanted sheep back into historical habitat. In a 1996 survey on Mount Williamson, there was no evidence of groups of sheep, and this subpopulation was the last one found using its low-elevation winter range in 1986. Mountain lion predation may have led to the extirpation of this subpopulation, one of the last two native subpopulations of Sierra Nevada bighorn sheep (Wehausen 1996; J. Wehausen, pers. comm. 1999).

In 1998 and 1999, few mountain lions were documented using the Wheeler Crest subpopulation winter habitat. As a result, this subpopulation returned to its winter range, and 15 lambs were born to the subpopulation in 1998 and again in 1999. The Langley subpopulation continues to avoid its winter habitat, presumably due to the presence of mountain lions there. As a result, the ewes were in very poor condition in the spring and had not recovered to good condition by August 1999. One sheep was documented to have been killed by a mountain lion in 1999 (J. Wehausen, pers. comm. 1999).

On September 16, 1999, California enacted legislation (Assembly Bill 560) amending Proposition 117 allowing the CDFG to remove or take mountain lions that are perceived to be a threat to the survival of any threatened, endangered or fully protected sheep species (Diana Craig, FS, *in litt.* 1999; Office of the Governor 1999). Passage of this bill will help manage mountain lion predation on Sierra Nevada bighorn sheep, but likely will not eliminate this threat. The authority of the State to manage mountain lion predation under this law is limited and has not yet been fully tested. For example, the law allows the State to take mountain lions perceived to be an immediate threat to protected bighorn sheep. However, it is not clear that this authority extends to removing lions whose presence at lower elevation, winter sheep habitat precludes normal, seasonal, bighorn sheep migration patterns. The ability to migrate to these lower elevation areas for winter use is considered crucial to improving the productivity rate of bighorn sheep populations.

The Sierra Nevada bighorn sheep restoration program, implemented between 1979 to 1988 to reintroduce the sheep into historical habitat, used the Mount Baxter subpopulation as the source of reintroduction stock. The three reintroduced subpopulations at Lee Vining Canyon, Wheeler Crest, and Mount Langley all suffered from mountain lion predation shortly after translocation of sheep (Wehausen 1996). The Lee Vining Canyon subpopulation lost a number of sheep to mountain lion predation, threatening the success of the reintroduction effort (Chow 1991, cited by Wehausen (1996)). The subpopulation was supplemented with additional sheep, and the State removed one mountain lion each year for 3 years, which helped reverse the decline of this subpopulation (Bleich *et al.* 1991 and Chow 1991, cited by Wehausen (1996)). Also, because domestic sheep are preyed upon by mountain lions, livestock operators who have a Federal permit to graze their sheep on FS land can get a depredation permit from the State, and have the U.S. Department of Agriculture, Wildlife Services, remove the mountain lion. The Lee Vining Canyon subpopulation occurs in the general area where domestic sheep are permitted, and has benefitted from the removal of mountain lions that were preying on domestic sheep (B. Pritchard, pers. comm. 1999). However, this subpopulation has continued to decline, and in 1999, only one reproductive ewe remains (J. Wehausen, pers. comm. 1999).

D. The Inadequacy of Existing Regulatory Mechanisms

In response to a very rapid decline in population numbers, in 1876 the State legislature amended an 1872 law that provided seasonal protection for elk, deer and pronghorn to include all bighorn sheep. Two years later, this law was amended, establishing a 4-year moratorium on the taking of any pronghorn, elk, mountain sheep or female deer. In 1882, this moratorium was extended indefinitely for bighorn sheep (Wehausen *et al.* 1987). In 1971, California listed the California bighorn sheep as ''rare.'' The designation was changed to ''threatened'' in 1984 to standardize the terminology of the amended California Endangered Species Act (CESA) (Advisory Group 1997). The California Fish and Game Commission upgraded the species' status to ''endangered'' in 1999 (Mammoth Times 1999; San Francisco Chronicle 1999; CDFG 1999). Pursuant to the California Fish and Game Code and the CESA, it is unlawful to import or export, take, possess, purchase, or sell any species or part or product of any species listed as endangered or threatened. Permits may be authorized for certain scientific, educational, or management purposes, and to allow take incident to otherwise lawful activities.

The policy of the State of California is to protect and preserve all native species and their habitat, such as the Sierra Nevada bighorn sheep, that are threatened by extinction or are experiencing a significant decline that, if not halted, would lead to a threatened or endangered designation (California Fish and Game Commission 1999). However, the Sierra Nevada bighorn sheep occurs mainly on Federal lands administered by the BLM and the FS.

These Federal agencies are responsible for regulating activities on Federal lands that may adversely affect bighorn sheep. For example, the State alone cannot effectively address disease transmission from domestic sheep to Sierra Nevada bighorn sheep because the State does not regulate grazing on Federal lands.

Since the Sierra Nevada bighorn sheep was listed by the State of California in 1971, the CDFG has undertaken numerous efforts for the conservation of the sheep, including but not limited to—(1) intensive field studies; (2) reestablishment of three additional subpopulations in historical habitat; (3) creation, in 1981, of the Sierra Nevada Bighorn Sheep Interagency Advisory Group, including representatives from Federal, State, and local resource management agencies, which has produced the Sierra Nevada Bighorn Sheep Recovery and Conservation Plan (1984) and a Conservation Strategy for Sierra Nevada Bighorn Sheep (1997); and (4) culling four mountain lions that were taking Sierra Nevada bighorn sheep, which played a significant role in the efforts to reestablish one subpopulation (Chow 1991, cited by Wehausen (1996)).

Mountain lion hunting has not occurred in California since 1972 (Tories *et al.* 1996). As a result of passage of Proposition 117 in 1990 prohibiting the hunting or control of mountain lions, the CDFG lost the authority to remove mountain lions to protect the Sierra Nevada bighorn sheep and secure their survival. However, in September of 1999, California passed legislation (A. B. 560) allowing the CDFG to take or remove mountain lions that are a threat to the Sierra Nevada bighorn sheep populations (D. Craig, *in litt.* 1999; Office of the Governor 1999). We believe that this law will help eliminate the threat due to mountain lion predation, but will likely not completely eliminate it. In addition, this legislation was enacted so recently that little time has passed to allow us to evaluate its effectiveness as a regulatory mechanism.

Federal agencies have authority to manage the land and activities under their administration to conserve the bighorn sheep. Federal agencies are taking steps to enhance habitat through prescribed burning to improve forage and maintain open habitat, and to retire domestic sheep allotments that run adjacent to bighorn sheep habitat. For example, the FS burned 263 hectares (ha) (650 acres (ac)) in 1997 in Lee Vining Canyon to reduce mountain lion hiding cover, and there are plans to do more burns in other areas on FS land (R. Perloff, pers. comm. 1999). However, in some cases, because of conflicting management concerns, conservation efforts are not proceeding as quickly as necessary. Although efforts have been underway for many years, the FS has been unable to eliminate the known threat of contact between domestic sheep and the Sierra Nevada bighorn sheep by either eliminating adjacent grazing allotments, or modifying allotments such that a sufficient buffer zone exists that would prevent contact between wild and domestic sheep.

In 1971, the State, in cooperation with the FS, established a sanctuary for the Mount Baxter and Mount Williamson subpopulation of Sierra Nevada bighorn sheep and called it the California Bighorn Sheep Zoological Area (Zoological Area) (Wehausen 1979; Inyo National Forest Land Management Plan (LMP) 1988). The FS set aside about 16,564 ha (41,000 ac) of FS land for these two subpopulations. At the time, many felt that the species' decline was related to human disturbance. The sanctuary was designed to regulate human use in some areas (Hicks and Elder 1979), and reduce domestic sheep/wild sheep interaction by constructing a fence below the winter range of the Mount Baxter subpopulation along the FS and BLM boundary (Wehausen 1979). Adjacent summer range on NPS land was also given a restrictive designation to reduce human disturbance (Wehausen 1979). The FS continues to manage the Zoological Area; it encompasses land designated as wilderness and mountain sheep habitat (LMP 1988; R. Perloff, pers. comm. 1999).

Despite the establishment of the sanctuary, the sheep population has continued to decline. This decline is most likely due to mountain lion predation and the abandonment of low elevation winter range (Wehausen 1996). Also, the sanctuary fence was constructed only at the mouth of the canyon where the Mount Baxter herd winters, adjacent to a stock driveway used to drive domestic sheep towards their summer grazing allotments on Federal land further north (B. Pritchard, pers. comm. 1999). The fence does not prevent domestic sheep from leaving their bands while on the grazing allotments and moving into habitat used by Sierra Nevada bighorn sheep.

E. Other Natural or Manmade Factors Affecting its Continued Existence

The Sierra Nevada bighorn sheep population is critically small with a total of only 125 sheep known from 5 subpopulations. There is no known interaction between the separate subpopulations. The Sierra Nevada bighorn sheep currently is highly vulnerable to extinction from threats associated with small population size and naturally occuring events.

Although inbreeding depression has not been demonstrated in the Sierra Nevada bighorn sheep, the number of sheep occupying all areas is critically low. The minimum size at which an isolated group of this species can be expected to maintain itself without the deleterious effects of inbreeding is not known. Researchers have suggested that a minimum effective population size of 50 is necessary to avoid short-term inbreeding depression, and 500 to maintain genetic variability for long-term adaptation (Franklin 1980). Small populations are extremely susceptible to chance variation in age and sex ratios or other population parameters (demographic stochasticity) and genetic problems (Caughley and Gunn 1996). Small populations suffer higher extinction probabilities from chance events such as skewed sex ratio of offspring, (*e.g.,* fewer females being born than males). For example, the Mount Langley subpopulation has been declining. In 1996–97, out of a subpopulation of 4 ewes and 10 rams, 5 lambs were born, of which 4 were female. Although a positive event for this subpopulation, it could have been devastating if the female:male ratio had been reversed (J. Wehausen, pers. comm. 1999).

The five subpopulations include a total of nine female demes (*i.e.,* local populations). These demes are defined by separate geographic home range patterns of the females. Three of these demes appear not to use low elevation winter ranges at all, and they will probably go extinct as a result (J. Wehausen, pers. comm. 1999). For example, the Black Mountain deme, consisting of five ewes, was previously part of the Sand Mountain deme, which also has five ewes and is part of the Mount Baxter subpopulation. The Black Mountain deme became a separate deme after winter range abandonment in the late 1980s, and does not appear to know of the Sand Mountain winter range, which lies considerably north of their home range. This deme has shown a steady decline in size (J. Wehausen, pers. comm. 1999).

There are six female demes that may persist, but all are still very vulnerable to extinction due to small size. With the likely extinction of some of the existing demes, the remaining demes become all the more important to the persistence of this distinct population segment, and each remaining female is critically important to her deme. Individual mountain lions can do enormous

damage to any of these small demes, as can catastrophic events such as snow avalanches.

We also do not know the current distribution of genetic variation among all of these subpopulations. Each subpopulation likely has lost some genetic variability, thereby reducing its ability for long-term adaptation. The ultimate goal of conserving this DPS must be to preserve as much of its genetic variation a possible. It is likely that all or some of the existing demes now contain some variation not represented in others. Until some measure of the distribution of genetic variation exists, every deme should be considered a significant portion of the overall population. Maintenance of genetic variability requires the preservation of rams in addition to ewes.

Small, isolated groups are also subject to extirpation by naturally occurring random environmental events (*e.g.,* prolonged or particularly heavy winters and avalanches). In 1995, for example, a dozen sheep died in a single avalanche at Wheeler Crest (J. Wehauser, pers. comm. 1999). Such threats are highly significant because the subpopulations are small and it is also common in bighorn sheep for all members of one sex to occur in a single group. During the very heavy winters in the late 1970s and early 1980s, there was no notable mortality in the subpopulations because they were using low elevation winter ranges (J. Wehausen, pers. comm. 1999).

Competition for critical winter range resources can occur between bighorn sheep and elk and/or deer (Cowan and Geist 1971). However, competition between these species does not appear significant since deer and bighorn sheep readily mix on winter range, and the habitat overlap between elk and bighorn sheep is slight (Wehausen 1979).

In addition to disease, mountain lion predation, and naturally occurring events, other factors may contribute to bighorn sheep mortality. For example, two subpopulations (Wheeler Crest and Lee Vining) have ranges adjacent to paved roadways, exposing individuals from those subpopulations to potential hazards. Bighorn sheep have been killed by vehicles in Lee Vining Canyon on several occasions (V. Bleich, pers. comm. 1999).

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in developing this final rule. All five subpopulations of the Sierra Nevada distinct population of California bighorn sheep are imperiled by disease, predation, naturally occurring environmental events, and the continual loss of genetic variation if the subpopulations remain small. The Sierra Nevada bighorn sheep population reached a high of about 310 in 1985–86, but subsequent population surveys have documented a declining trend. Currently, only about 125 animals exist. The potential for contact with domestic sheep and the transmission of disease could, by itself, eliminate an entire deme. Domestic sheep continue to stray into Sierra Nevada bighorn sheep habitat and come into close proximity to the resident bighorn sheep on numerous occasions. However, domestic sheep have not come into contact with bighorn sheep during these events. Vulnerability to demographic problems must be viewed as a combination of immediate threats of predation, changed habitat use due to the presence of mountain lions, the resultant decline of ewe nutrition and lamb survivorship, exposure to environmental catastrophes, and the transmission of disease from domestic sheep. Because of the high potential for these threats to result in the extinction of this bighorn sheep distinct population segment, it warrants listing as endangered. Immediately upon publication, this final rule will continue the protection for this DPS of California bighorn sheep, which began when we emergency listed this DPS on April 20, 1999.

Critical Habitat

In the emergency rule, we indicated that designation of critical habitat was not determinable for the Sierra Nevada bighorn sheep due to a lack of information sufficient to perform the required analysis of impacts of the designation. We have re-examined the question of whether critical habitat is not determinable, and have determined that there is sufficient information to do the required analysis.

In the absence of a finding that critical habitat would increase threats to a species, if there are any benefits to critical habitat designation, then a prudent finding is warranted. In the case of this species, there may be some benefits to designation of critical habitat. The primary regulatory effect of critical habitat is the section 7 requirement that Federal agencies refrain from taking any action that destroys or adversely modifies critical habitat (see Available Conservation Measures section) . While a critical habitat designation for habitat currently occupied by this species would not likely change the section 7 consultation outcome, because an action that destroys or adversely modifies such critical habitat would also be likely to result in jeopardy to the species, there may be instances where section 7 consultation would be triggered only if critical habitat is designated. Examples could include unoccupied habitat or occupied habitat that may become unoccupied in the future. There may also be some educational or information benefits to designating critical habitat. We find that critical habitat is prudent for the Sierra Nevada bighorn sheep.

Our Final Listing Priority Guidance for FY 2000 (64 FR 57114) states that the processing of critical habitat determinations (prudency and determinability decisions) and proposed or final designations of critical habitat will no longer be subject to prioritization under the Listing Priority Guidance. Critical habitat determinations, which were previously included in final listing rules published in the **Federal Register**, may now be processed separately, in which case stand-alone critical habitat determinations will be published as notices in the **Federal Register**. We will undertake critical habitat determinations and designations during FY 2000 as allowed by our funding allocation for that year.'' As explained in detail in the Listing Priority guidance, our listing budget is currently insufficient to allow us to immediately complete all of the listing actions required by the Act. Deferral of the critical habitat designation for the Sierra Nevada bighorn sheep will allow us to concentrate our limited resources on higher priority critical habitat and other listing actions, while allowing us to put in place protections needed for the conservation of the Sierra Nevada bighorn sheep without further delay. However, because we have successfully reduced, although not eliminated, the backlog of other listing actions, we anticipate in FY 2000 and beyond giving higher priority to critical habitat designation, including designations deferred pursuant to the Listing Priority Guidance, such as the designation for this species, than we have in recent fiscal years.

We plan to employ a priority system for deciding which outstanding critical habitat designations should be addressed first. We will focus our efforts on those designations that will provide the most conservation benefit, taking into consideration the efficacy of critical habitat designation in addressing the threats to the species, and the magnitude and immediacy of those threats. We will develop a proposal to designate critical habitat for the Sierra Nevada bighorn sheep as soon as feasible, considering our workload

priorities. For the immediate future, most of Region 1's listing budget must be directed to complying with numerous court orders and settlement agreements, as well as due and overdue final listing determinations.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened, and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. If a species is listed, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its designated critical habitat. If a Federal agency action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with us. Federal agency actions that may require conference and/or consultation include those within the jurisdiction of the FS, BLM, and NPS.

We believe that protection of the Sierra Nevada bighorn sheep requires reduction of the threat of mountain lion predation, particularly during the months of April and May when bighorn sheep attempt to use low elevation winter ranges to obtain necessary nutrition after lambing, and ewes and lambs are most vulnerable to predation. California's recently enacted legislation (A. B. 560) allowing removal of mountain lions that threaten Sierra Nevada bighorn sheep will reduce this threat. Removal of mountain lions may not necessarily involve lethal techniques.

We believe that protection of the Sierra Nevada bighorn sheep also requires reduction of the threat of disease transmission from domestic sheep by preventing domestic sheep from coming into contact with bighorn sheep. We will work with the FS to reduce the threat of disease transmission by domestic sheep. Reduction of this threat may involve elimination of grazing allotments adjacent to bighorn sheep habitat, or modifying allotments to create a sufficient buffer zone that would prevent contact between domestic sheep and bighorn sheep.

Listing this species would provide for the development of a recovery plan. Such a plan would bring together both State and Federal efforts for the conservation of the species. The plan would establish a framework for agencies to coordinate activities and cooperate with each other in conservation efforts. The plan would set recovery priorities and estimate costs of various tasks necessary to accomplish them. It also would describe site-specific management actions necessary to achieve conservation and survival of the Sierra Nevada bighorn sheep. Additionally, pursuant to section 6 of the Act, we would be able to grant funds to affected states for management actions promoting the protection and recovery of this species.

The Act and implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. The prohibitions, as codified at 50 CFR 17.21, in part, make it illegal for any person subject to the jurisdiction of the United States to take (including harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect, or attempt any such conduct), import or export, transport in interstate or foreign commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any endangered animal species. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to our agents and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22. For endangered species, such permits are available for scientific purposes, to enhance the propagation or survival of the species, or for incidental take in connection with otherwise lawful activities.

It is our policy, published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify to the maximum extent practicable at the time a species is listed those activities that likely would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of a listing on proposed and ongoing activities within a species' range. Activities we believe will likely result in a violation of section 9 include, but are not limited to:

(1) Unauthorized trapping, capturing, handling or collecting of Sierra Nevada bighorn sheep. Research activities involving trapping or capturing of Sierra Nevada bighorn sheep will require a permit under section 10(a)(1)(A) of the Act.

(2) Failure to confine livestock to authorized grazing allotments resulting in transmission of disease or habitat destruction.

Activities we believe will not likely result in a violation of section 9 are:

(1) Possession, delivery, or movement, including interstate transport and import into or export from the United States, involving no commercial activity, of dead specimens of Sierra Nevada bighorn sheep that were collected prior to April 20, 1999, the date of publication of the emergency listing rule in the **Federal Register**;

(2) Normal, legal recreational activities in designated campsites or recreational use areas, and on authorized trails.

Direct your questions regarding any specific activities to our Ventura Fish and Wildlife Office (see **ADDRESSES** section). Requests for copies of the regulations regarding listed wildlife and about prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Ecological Services, Endangered Species Permits, 911 Northeast 11th Avenue, Portland, Oregon 97232–4181 (telephone 503/231–2063; facsimile 503/231–6243).

National Environmental Policy Act

We have determined that an environmental assessment or environmental impact statement, as defined under the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

Paperwork Reduction Act

This rule does not contain any information collection requirements for which Office of Management and Budget (OMB) approval under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* is required. An information collection related to the rule pertaining to permits for endangered and

threatened species has OMB approval and is assigned clearance number 1018–0094. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number. This rule does not alter that information collection requirement. For additional information concerning permits and associated requirements for endangered wildlife, see 50 CFR 17.22.

References Cited

A complete list of references cited in this rule is available upon request from the Ventura Fish and Wildlife Office of the U.S. Fish and Wildlife Service (see **FOR FURTHER INFORMATION CONTACT** section).

Authors. The primary authors of this final rule are Carl Benz, Ventura Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT** section), and Barbara Behan, Regional Office, 911 N.E. 11th Avenue, Portland, Oregon 97232 (telephone 503/231–6131).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as follows:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. Amend § 17.11(h) by adding the following, in alphabetical order under MAMMALS, to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific Name						
*	*	*	*	*	*	*	
MAMMALS							
*	*	*	*	*	*	*	
Sheep, Sierra Nevada bighorn.	*Ovis canadensis californiana*.	U.S.A. (western conterminous states), Canada (southwest), Mexico (north).	U.S.A., CA-Sierra Nevada.	E	660E 675	NA	NA
*	*	*	*	*	*	*	

Dated: December 22, 1999.

Jamie Rappaport Clark,

Director, Fish and Wildlife Service.

[FR Doc. 99–34056 Filed 12–30–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 902

50 CFR Part 216

[Docket 990324081–9336–02, ID072098G]

RIN 0648–AI85

Taking of Marine Mammals Incidental to Commercial Fishing Operations; Tuna Purse Seine Vessels in the Eastern Tropical Pacific Ocean (ETP)

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

ACTION: Interim final rule; request for comments.

SUMMARY: NMFS issues an interim final rule to implement provisions of the International Dolphin Conservation Program Act (IDCPA). This interim final rule allows the entry of yellowfin tuna into the United States under certain conditions from nations fully complying with the International Dolphin Conservation Program (IDCP). It also allows U.S. vessels to set their purse seines on dolphins in the ETP. The standard for the use of ''dolphin-safe'' labels for tuna products also is changed. This interim final rule also establishes a tuna-tracking program to ensure adequate tracking and verification of tuna harvested in the ETP.

DATES: Effective February 2, 2000. Comments must be received no later than 5 p.m., Pacific standard time, on April 3, 2000.

ADDRESSES: Written comments should be sent to J. Allison Routt, NMFS, Southwest Region, Protected Resources Division, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213. Comments also may be sent via facsimile (fax) to 562–980–4027. Comments will not be accepted if submitted via e-mail or Internet. Copies of the Environmental Assessment (EA) accompanying this interim final rule may be obtained by writing to the same address. Send comments regarding reporting burden estimates or any other aspect of the collection-of-information requirements in this interim rule, including suggestions for reducing the burdens to J. Allison Routt and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 (ATTN: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: J. Allison Routt, NMFS, Southwest Region, Protected Resources Division, (562) 980–4020, fax 562–980–4027.

SUPPLEMENTARY INFORMATION:

Background

In 1992, nations fishing for tuna in the ETP, including the United States, reached a non-binding international agreement (referred to as the La Jolla Agreement) that included, among other measures, a dolphin mortality reduction schedule providing for significant reductions in dolphin mortalities. By 1993, nations fishing in the ETP under the La Jolla Agreement had reduced dolphin mortality to less than 5,000 dolphins annually, 6 years ahead of the schedule established in that Agreement. In October 1995, the success of the La Jolla Agreement led the United States, Belize, Colombia, Costa Rica, Ecuador, France, Honduras, Mexico, Panama,

Spain, Vanuatu, and Venezuela to sign the Panama Declaration to strengthen and enhance the IDCP.

The program outlined in the Panama Declaration provides greater protection for dolphins and enhances the conservation of yellowfin tuna and other living marine resources in the ETP ecosystem. The Panama Declaration anticipated that the United States would amend 16 U.S.C. 1361 et seq., the Marine Mammal Protection Act (MMPA), to allow import of yellowfin tuna into the United States from nations that are participating in, and are in compliance with, the IDCP. Implementation of the Panama Declaration by the United States was also anticipated in order to allow U.S. vessels to participate in the ETP fishery on an equal basis with the vessels of other nations. Under the Panama Declaration, signatory nations agreed to develop a legally binding international agreement.

Congress considered several bills to implement the Panama Declaration, ultimately passing the IDCPA. The IDCPA was signed into law on August 15, 1997. The IDCPA was the domestic endorsement of the La Jolla Agreement, incorporating elements of the Panama Declaration, under the auspices of the Inter-American Tropical Tuna Commission (IATTC). The IDCPA primarily amends provisions in the MMPA and the Dolphin Protection Consumer Information Act (DPCIA), 16 U.S.C. 1385, governing marine mammal mortality in the U.S. ETP tuna purse seine fishery and the importation of yellowfin tuna and yellowfin tuna products from other nations with vessels engaged in the ETP tuna purse seine fishery.

The IDCPA, together with the Panama Declaration, became the blueprint for the Agreement on the IDCP. In May 1998, eight nations, including the United States, signed a binding, international agreement to implement the IDCP. The Agreement on the IDCP became effective on February 15, 1999, after four nations (United States, Panama, Equador, and Mexico) deposited their instruments of ratification, acceptance, or adherence with the depository for the agreement. On March 3, 1999, the Secretary of State provided the required certification to Congress that the Agreement on the IDCP had been adopted and was in force. Consequently, the IDCPA became effective on that date. Provisions to implement the IDCPA and the new international agreement for dolphin conservation in the ETP are the subject of this interim final rule.

Proposed Rule

On June 14, 1999, NMFS published proposed regulations to implement the IDCPA (64 FR 31806). These regulations proposed to (1) allow the entry of yellowfin tuna into the United States under certain conditions from nations fully complying with the IDCP; (2) allow U.S. vessels to set their purse seines on dolphins in the ETP; (3) change the standard for use of dolphin-safe labels for tuna products and; (4) establish a system to ensure adequate tracking and verification of tuna harvested in the ETP.

Public comments on the proposed rule were accepted through July 14, 1999. NMFS held two public hearings on the proposed rule: one in Long Beach, CA, on July 8, 1999, and one in Silver Spring, MD, on July 14, 1999. In addition to publishing the proposed rule in the **Federal Register**, NMFS sent it to industry representatives, environmental groups, vessel and operator certificate of inclusion holders, importers, IDCP member nations, Department of State, IATTC, U.S. Commissioners to the IATTC, Department of the Treasury, U.S. Customs Service, Marine Mammal Commission, Department of Justice, and the Federal Trade Commission. NMFS also issued a press release announcing the public hearings and summarizing the major issues contained in the proposed rule. Information in the press release was published in several national newspapers, NMFS websites, and broadcast on several radio stations.

Responses to Comments

NMFS received over two thousand comments during the comment period for the proposed rule. Comments were received from industry, environmental organizations, members of the public, the Marine Mammal Commission, the IATTC, the Department of State, the U.S. Customs Service, and foreign nations. Key issues and concerns are summarized below and responded to as follows:

Comments on Definitions

Comment 1: One commenter indicated that the ETP boundary in the regulations should reflect the boundary used by the IDCP. Another commenter indicated that the language in the Agreement on the IDCP does not state whether fishing on dolphin occurs west of 150° West. Another commenter requested that the language be clarified by inserting ''in the Dolphin Protection Consumer Information Act (DPCIA)'' in the preamble sentence of the proposed rule: ''Although the Agreement on the IDCP applies in the Pacific Ocean west only to 150° W. meridian, the current definition of ETP is out to 160° W.'' as well as by deleting ''that overlap with the waters covered by the Agreement'' from the preamble sentence ''when they extend their fishing activities under the Treaty that governs their fishing in the South Pacific into waters that overlap with the waters covered by the Agreement on the IDCP.'' Another commenter suggested clarifying the sentence by inserting ''between 160° W and 150° W'' for the overlap area.

Response: Although the Agreement on the IDCP defines ''ETP'' as the area of the Pacific Ocean west to the 150° W, the DPCIA defines the ''ETP'' as the area of the Pacific Ocean out to the 160° West meridian. The recommended changes were not incorporated into the interim final rule since the background information on the ''ETP'' is not included in this preamble.

Comment 2: Many commenters recommended defining the term ''serious injury'' in the final rule.

Response: NMFS agrees and has defined a ''serious injury'' as an injury that will likely result in mortality. Individual reported injuries will be evaluated by the IATTC and NMFS using criteria developed by the International Program.

Comment 3: One commenter suggested modifying the definition of ''IDCPA'' in § 216.3 by adding the phrase ''and any subsequent amendments thereto'' to the end of the sentence.

Response: NMFS disagrees. The proposed definition for IDCPA is accurate.

Comment 4: Two commenters indicated that the term ''significant adverse impact'' must be defined since the definition of ''dolphin-safe'' is linked to the phrase.

Response: NMFS disagrees that this term needs to be defined in these regulations. In making the ''findings'' required by paragraph (g) of the DPCIA, NMFS considered, and will consider, a number of factors for determining whether the tuna purse seine fishery ''is having a significant adverse impact'' on the depleted dolphin stocks in the ETP. NMFS' focus is on the recovery and growth of depleted dolphin stocks in the ETP, as well as assessing changes in their population sizes over time.

Comment 5: One commenter suggested including a definition for ''fishing operations'' to avoid any misunderstandings as to when a permit is required.

Response: NMFS disagrees. The rule is clear when permits are required and exceptions are available for transiting the ETP.

Comment on Harmonized Tariff Schedule (HTS) Item Numbers

Comment 6: One commenter suggested removing the period from all the cited HTS numbers appearing before the HTS statistical suffixes for these numbers (e.g., 0303.42.00.20 should be 0303.42.0020) and under § 216.24(f)(2)(i)(D) change 0304.20.60.99 to 0304.20.6096 and change 0304.90.90.92 to 0304.90.9091; under § 216.24(f)(iii)(A) change 0303.79.40.96 to 0303.70.4097 and change 0304.20.60.99 to 0304.20.6096; and under § 216.24(f)(iii)(C) change 0304.20.60.98 to 0304.20.6096.

Response: NMFS agrees that the suggested numbers are correct and has made the changes.

Comments on Affirmative Findings and Embargoes

Comment 7: Several commenters indicated that the proposed rule does not contain a provision that would prevent a nation from being embargoed because of a disaster set or actions of a rogue vessel which might cause a nation to exceed its fleet Dolphin Mortality Limit (DML) even though the IDCP contains a provision to handle this type of situation. The commenters felt yellowfin tuna should not be embargoed if a nation is in compliance with the IDCP.

Response: NMFS agrees that if a nation's fleet's annual dolphin mortality or per-stock dolphin mortality exceeds its aggregate DMLs because of extraordinary circumstances beyond the control of the nation or of the vessel's captain, but otherwise is in conformance to the Agreement on the IDCP, that nation should not be embargoed. NMFS has made the change at § 216.24(f)(9)(i)(C). However, the nation must have immediately required all its vessels to cease fishing for tuna in association with dolphins for the remainder of the calendar year. This flexibility should encourage harvesting nations to comply with the Agreement on the IDCP, yet threaten economic sanctions against nations that do not control or manage their fleets.

Comment 8: One commenter questioned the accuracy of the title, ''Affirmative finding procedure for yellowfin tuna harvested using a purse seine in the ETP'' of § 216.24(f)(9) since under the IDCPA, an affirmative finding is made for a harvesting nation rather than for the yellowfin tuna that is harvested.

Response: NMFS agrees and has changed the title of § 216.24(f)(9) to read, ''Affirmative finding procedure for nations harvesting yellowfin tuna using a purse seine in the ETP.''

Comment 9: One commenter pointed out that § 216.24(f)(9)(i)(C) establishes different standards for United States and foreign fleets regarding the consequences of exceeding a nation's aggregate DMLs. A foreign nation would not receive an affirmative finding if it exceeded its aggregate DML the previous year. In contrast, as reflected by § 214.24(c)(8)(x)(B), the U.S. fleet would have to cease setting on dolphins if it reached or exceeded its aggregate DML, but yellowfin tuna caught by U.S. vessels could still be sold in the United States in subsequent years.

Response: NMFS agrees. Except in the case of a foreign nation that acts quickly to close its fishery after exceeding its national DML, as described in the response to Comment 7 above, the commenter's description is generally correct. The IDCPA does not require the United States to obtain an affirmative finding since U.S. vessels do not ''import'' tuna into the United States. Because of this, U.S. vessels still would be allowed to sell yellowfin tuna and yellowfin tuna products in the United States even if the United States had reached or exceeded its aggregate DML. However, appropriate sanctions would be taken against individual U.S. vessels that exceed their DML.

Comment 10: In §§ 216.24(f)(9)(iv) and 216.24(f)(9)(vi), the word ''met'' should probably be ''meets'' to reflect that the finding is to be based on current information.

Response: NMFS agrees in part and has changed the language to ''has met'' in § 216.24(f)(9)(iv). The phrase ''has met'' has been kept in § 216.24(f)(9)(vi) to be consistent with the verb tense of the sentence.

Comment 11: One commenter indicated the first sentence of § 216.24(f)(9)(viii) should be revised to indicate that yellowfin tuna is harvested ''using'' purse seine nets, rather than ''by'' purse seine nets.

Response: NMFS agrees that the participle ''using'' and has made the change.

Comment 12: One commenter indicated the second sentence of § 216.24(f)(9)(viii) would be clearer if the word ''only'' were inserted after the phrase ''may be imported into the United States ...''

Response: NMFS agrees and has inserted the word ''only'' in the sentence.

Comment 13: One commenter indicated that the proposed regulations at § 216.24(f)(12) do not seem to allow the purchase or sale of non-dolphin-safe tuna caught by U.S. vessels fishing in the ETP pursuant to a DML since the vessels will not be covered by an affirmative finding unless the United States issues an affirmative finding covering their own vessels.

Response: NMFS agrees that the IDCPA does not prohibit the purchase or sale of non-dolphin-safe tuna harvested by U.S. vessels fishing in compliance with the IDCP. The IDCPA prohibits the sale, purchase, offer for sale, transport or shipment of non-dolphin-safe tuna products in the United States unless the tuna is harvested in compliance with the IDCP and the harvesting nation is a member of the IATTC (MMPA section 307(a)(1)). For administrative convenience, NMFS proposed allowing only non-dolphin-safe tuna harvested by a nation with an affirmative finding to be sold, offered for sale, transported, purchased, or shipped in the United States. Upon further evaluation, NMFS has discovered that this requirement could inadvertently impact U.S. vessels because the U.S. does not give an affirmative finding to itself. The problem has been corrected by changing the title at § 216.24(f)(12) from ''Dolphin-Safe Requirements'' to ''Market Prohibitions'' and clarifying that the prohibition does not apply to tuna harvested by U.S. vessels in compliance with the IDCP.

Comment 14: Several commenters disagreed with NMFS' interpretation of the language in MMPA section 101(a)(2)(B)(iii) and believed that Congress intended to cap the total DMLs assigned to each harvesting nation's vessels at the total DMLs assigned to its vessels during 1997, or subsequent calendar years, even if the number of vessels has increased since then.

Response: NMFS disagrees that the IDCPA (or its legislative history) indicates Congress intended NMFS to compare a nation's aggregate (fleet) mortality limits to the nation's earlier limits. In the Panama Declaration, the United States pledged to lift embargoes against nations participating in accordance with the International Program. While the international program intended to reduce overall dolphin mortality, the Parties to the Panama Declaration and the IDCP did not contemplate limiting the size of any nation's fleet (at least not for the purpose of dolphin protection) or the size of any nation's aggregate DML. Under the La Jolla Agreement, the annual international cap was allocated on a per-vessel basis. However, under the Agreement on the IDCP, while the annual international cap on dolphin mortality is allocated on a per-nation basis, each nation's allocation is based on the number of its eligible purse seine vessels that are expected to set on dolphin in the upcoming year. As a

result, a nation could fish in strict compliance with the program but be embargoed by the United States if its fleet happened to be relatively large in the upcoming year and, therefore, receive a relatively large aggregate (fleet) DML. Penalizing a nation whose fleet has grown could discourage efficient utilization of resources (fishing vessel transfers between nations) without affecting overall international dolphin mortality. Harvesting nations that adopted good dolphin conservation programs because of the IDCP might quit the IDCP if subjected to this type of embargo. NMFS' interpretation is consistent with the Agreement on the IDCP and the intent of Congress to discourage mortalities.

Comment 15: One commenter suggested that, in addition to NMFS' proposal, an affirmative finding should also require that the DML assigned to each vessel in the international fishery never exceed the DML assigned in 1997. The commenter recommended inserting the language, ''keeps its fleet's annual dolphin mortality within the aggregate DML assigned to the fleet, and that it did not assign an individual vessel a total annual DML in excess of the DML established in 1997.''

Response: NMFS disagrees. NMFS proposes to focus on a nation's compliance with the international regime. Only a nation that fails to keep its own fleet's annual dolphin mortality within the aggregate DMLs assigned to the fleet would be embargoed, except in the case of extraordinary circumstances as described in the response to Comment 7. This focuses NMFS' attention on a fleet's results in protecting dolphin, which should reflect on the success of the harvesting nation's management and enforcement program, rather than on decisions by other Parties to the IDCP. This encourages other harvesting nations to comply with the IDCP and threatens economic sanctions against only those nations that do not control or manage their own fleets.

Comment 16: Commenters indicated that the intent of Congress in MMPA section 101(a)(2)(B)(iii) is to reduce dolphin mortality to a level approaching zero through the setting of annual limits and the goal of eliminating dolphin mortality. The commenters refer to the proposed rule at § 216.24(f)(9)(C) which would not condition affirmative findings on reducing international mortality limits to a ''level approaching zero.'' Commenters indicated that the proposed rule does not ratchet down the dolphin mortality as intended by Congress but rather establishes an international DML cap of 5,000 annually as stated in the IDCP agreement.

Response: NMFS believes the language in the rule is consistent with the IDCPA and the Agreement on the IDCP. The IDCPA and the Agreement on the IDCP do not establish processes to reduce dolphin mortality in the ETP tuna purse seine fishery to zero. The proposed rule's interpretation makes the most sense in the context of MMPA section 101(a)(2)(B) because it focuses on a nation's compliance within the international regime. Under this interpretation, only a nation that failed to keep its own fleet's annual dolphin mortality within the aggregate DMLs assigned to the fleet would be embargoed, except for extraordinary circumstances as described in the response to Comment 7. This interpretation focuses NMFS' attention on a fleet's results in protecting dolphin, which should reflect on the success of the harvesting nation's management and enforcement programs, rather than on decisions by other Parties to the IDCP.

Comment 17: Commenters indicated that to get an affirmative finding, nations should not have to apply on an annual basis, especially with regard to information such as whether the nation is a member of the IATTC or of the IDCP since the information is available from other sources (e.g., the IATTC and Department of State). A nation seeking to maintain an affirmative finding should only have to authorize the release of the information instead of having to submit the information on an annual basis. NMFS also received comments that it should be the responsibility of the harvesting nation to obtain and provide supporting documentation to the Assistant Administrator, and not the Assistant Administrator's responsibility to obtain the documentation from the IATTC. In addition, several commenters opposed the concept of a multi-year affirmative finding process and supported the existing annual application process for an affirmative finding.

Response: NMFS will gather the necessary documentary information through other channels (e.g., the Department of State and/or the IATTC), provided nations authorize the release of the information, instead of having each nation submit the information to NMFS on an annual basis. NMFS will evaluate this evidence and continue to make affirmative findings on an annual basis. Beginning with the first year the regulations are effective and every 5 years thereafter, or if requested, nations will need to submit sufficient documentary evidence to NMFS for an affirmative finding. After considering alternatives, NMFS determined this is an appropriate balance of burdens between NMFS and applicant nations.

Comment 18: One commenter recommended that NMFS require more detailed information than required by the IDCPA to be submitted by harvesting nations to obtain an affirmative finding. The commenter suggested keeping the previous implementing regulations at § 216.24(e)(5)(i) through (v) and updating the information as necessary to reflect the requirements in the IDCP.

Response: Many of the regulations listed under the previous implementing regulations at § 216.24(e)(5)(i) through (v) are not consistent with the IDCPA or are no longer applicable (e.g., comparability standards) and would be unnecessary and burdensome to the harvesting nation requesting an affirmative finding. Most of the information required to make an affirmative finding is available through the IATTC. The IDCPA sets new standards for affirmative findings and no longer requires much of the information in the previous implementing regulations.

Comment 19: One commenter suggested that, under the background information on affirmative findings in the proposed rule, language from Annex III to the Agreement on the IDCP that requires a system for allocating stock-specific quotas be established within 6 months of the entry of force of the Agreement on the IDCP (e.g., by August 15, 1999) should be included.

Response: NMFS recognizes that Annex III, Per-Stock, Per-Year Dolphin Mortality Caps, to the Agreement on the IDCP indicates that, within 6 months of the entry into force, the Parties agreed to establish a system for the allocation of the per-stock, per-year dolphin mortality cap for each stock for the ensuing year and years thereafter by August 15, 1999. The Parties have agreed on a global allocation system that will establish per-stock, per-year mortality limits that will be in effect during calendar year 2000, at a level of 0.2 percent of the minimum population estimate. In addition, the IATTC will monitor the per-stock, per-year mortality limits and notify nations when limits are being approached so that fishing will cease on the stock(s) whose limits have been reached.

Comment 20: In the Preamble, the final rule should clearly indicate what Secretarial findings have been made, what findings remain to be made, and how the regulations relate to those findings.

Response: The initial finding was published in the **Federal Register** on May 7, 1999 (64 FR 24590). NMFS found that there is insufficient evidence

to determine that chase and encirclement by the tuna purse seine fishery ''[are] having a significant adverse impact'' on depleted dolphin stocks in the ETP. Based on this finding, the Assistant Administrator will apply the ''dolphin-safe'' definition specified in paragraph (h)(1) of the DPCIA (16 U.S.C. 1385(h)(1)) to tuna harvested in the ETP by purse seine vessels with carrying capacity greater than 400 short tons (362.8 mt), e.g., that no dolphins were killed or seriously injured during the sets in which the tuna were caught. The final finding is due between July 1, 2001, and December 31, 2002.

Comment 21: One commenter urged NMFS to develop and define a better process under § 216.24(f)(5)(x), other than a statement from a responsible government official, to verify that shipments exported from designated ''high seas driftnet nations'' were not harvested by using large-scale driftnets.

Response: NMFS disagrees. This system has been in place since 1992 and was not proposed to be changed by this rule. In addition to statements from responsible government officials, the U.S. Coast Guard and NMFS will continue to monitor the world's oceans for the use of high seas driftnets as required by the High Seas Driftnet Fisheries Enforcement Act of 1992 (Pub. L. No. 102–582).

Comment 22: One commenter asked whether the ''certification and reasonable proof'' required in § 216.24(f)(9)(viii) of the proposed rule for intermediary nations to export tuna to the United States is applicable to all yellowfin tuna or specifically to tuna harvested by purse seine in the ETP.

Response: The certification and reasonable proof required by § 216.24(f)(9)(viii) applies to intermediary nations exporting yellowfin tuna and yellowfin tuna products harvested with purse seine nets in the ETP. For the purposes of § 216.24(f)(9)(viii), the term ''certification and reasonable proof'' entails the nation's customs records for the preceding 6 months, together with a certification attesting that the documents are accurate.

Comment 23: One commenter indicated that the proposed § 216.24(f)(9)(vi) was unclear whether determinations made by the Assistant Administrator and published in the **Federal Register** for intermediary nations are made only once or are made on an ongoing basis. The commenter suggested that NMFS conduct a periodic review of determinations rather than requiring the review only when requested by the intermediary nation.

Response: The Assistant Administrator will publish the determination for intermediary nations only once in the **Federal Register**. However, the Assistant Administrator will review decisions upon the request of an intermediary nation and will review documentary evidence that indicates a nation has imported, in the preceding 6 months, yellowfin tuna or yellowfin tuna products that are subject to a ban on direct importation into the United States.

Comment 24: One commenter felt that the United States should not require intermediary nations to prove that they did not import tuna that was caught by nations not subject to an embargo. The regulations should be clear that a nation will be considered to be an intermediary nation only when the Assistant Administrator becomes aware of credible evidence that the nation in question is importing yellowfin tuna from the ETP that are subject to a ban on direct importation into the United States. In addition, such nations should be provided an opportunity to refute any such allegations.

Response: NMFS agrees. The regulations at § 216.24(f)(9)(vi) have been revised to clarify that the Assistant Administrator will determine which nations are intermediary nations and publish such determinations in the **Federal Register**. After a nation is determined to be an ''intermediary nation,'' it will be the responsibility of the nation to provide the documentary evidence for a new determination by proving that it has not imported, in the preceding 6 months, yellowfin tuna or yellowfin tuna products that are subject to a ban on direct importation into the United States.

Comment 25: One commenter stated that yellowfin tuna or yellowfin tuna products subject to direct ban on importation to the United States may pass through a nation on a through bill of lading without causing the nation to be an intermediary nation.

Response: NMFS agrees since, under section 3 of the MMPA, an ''intermediary nation'' is defined as a nation that exports yellowfin tuna or yellowfin tuna products to the United States and that imports yellowfin tuna or yellowfin tuna products that are subject to a direct ban on importation into the United States pursuant to MMPA section 101(a)(2)(B). Since shipments on a through bill of lading are not actually imported or exported from a nation under U.S. regulations at § 216.24(f)(9)(viii), the nation would not be considered an ''intermediary nation'' under the MMPA.

Comment 26: One commenter expressed concern that no nation whose vessels currently fish in the ETP are meeting their ''financial obligations to the IATTC'' as part of the requirement to receive an affirmative finding under § 216.24(f)(9)(i)(B). In addition, several commenters requested a list of the criteria used by the United States to determine whether the nations whose vessels are fishing in the ETP are meeting their financial obligations.

Response: The IDCPA does not specify what is meant by ''financial obligations.'' Under the Tuna Conventions Act (the Convention), the expenses of the IATTC are to be shared by the Contracting Parties in relation to the proportion of the total catch from the fisheries covered by the Convention utilized by each Party. ''Utilized'' is defined under the Tuna Conventions Act as tuna eaten fresh or processed for internal consumption or export. Thus, tuna landed by a Party and subsequently exported in the round are not included in computing that Party's contribution, but those which are exported in canned form are included. NMFS will request the IATTC Director to verify that a nation is fulfilling its financial obligations. The IATTC intends to develop a new framework for determining contributions that will allow the IATTC to continue functioning at its current level under the new international agreement. The U.S. delegation will assist with the development of this new framework.

Comment 27: One commenter requested that NMFS include a table in the regulations indicating the ''level of utilization'' (e.g., amount of tuna eaten fresh or processed for internal consumption or export) in 1998 by each nation, the approximate amount of financial contribution required, and the type of documentation that will be required to prove the financial obligations have been met.

Response: NMFS will summarize the information used to make an affirmative finding for each nation at the time an affirmative finding notice is published in the **Federal Register**. Publishing information tables in regulations is not practical since information becomes obsolete too quickly. NMFS will rely on the IATTC staff to provide documentary information to determine whether Parties are meeting their financial obligations.

Comment 28: One commenter indicated that ''financial obligations'' should mean ''equitable'' funding as defined in the Convention for the establishment of an IATTC (''shall be related to the proportion of the total catch'') to obtain an affirmative finding.

The commenter also suggested the United States should pay no more than its share of the cost to operate the IATTC.

Response: This rule does not govern dues paid to the IATTC. By meeting the membership obligations of the IATTC, including all financial obligations, nations are complying with the Convention for the establishment of an IATTC. The financial obligations are determined by the proportion of the total catch from the fisheries covered by the Convention utilized by each Party. ''Utilized'' is defined as tuna eaten fresh or processed for internal consumption or export.

Comment 29: One commenter noted that, unless a harvesting nation is contributing an equitable amount to support the IATTC, the nation should be embargoed as required by the IDCPA.

Response: NMFS disagrees since the IDCPA does not require a nation to provide ''equitable contributions'' to support the IATTC in order to obtain an affirmative finding, but rather to meet its ''financial obligations'' of membership to the IATTC. However, under section 108(a)(2)(C) of the MMPA, the Secretary of Commerce through the Secretary of State may initiate negotiations to revise the Conventions for the Establishment of an Inter-American Tropical Tuna Commission which will incorporate a revised schedule of annual contributions to cover the expenses of the IATTC that is ''equitable'' to participating nations. As explained in the response to Comment 26, the State Department is proactively engaged in discussions on this topic with other IATTC member nations.

Comment 30: Three commenters indicated there needs to be a mechanism for verifying that harvesting nations have become members of, or have ''initiated'' the process of becoming a member in, the IATTC and are meeting the financial obligations of such membership.

Response: NMFS will be able to obtain the necessary information from the IATTC staff to verify whether harvesting nations have become members of, or have ''initiated'' the process of becoming members of, the IATTC and are meeting the financial obligations of such membership.

Comment 31: One commenter indicated that, if the United States is going to continue to fund the IATTC in excess of 90 percent, then the observer data collected by the IATTC staff should be available to U.S. citizens under the Freedom of Information Act (FOIA).

Response: NMFS disagrees since the FOIA does not apply to international organizations. U.S. money does not transform the IATTC into a U.S. government agency. Therefore, observer data collected by the IATTC are not available under the FOIA.

Comments on ''Dolphin-Safe'' Requirements

Comment 32: One commenter wanted to confirm that U.S. customs would not be enforcing the labeling requirement.

Response: The Federal Trade Commission is responsible for enforcing the labeling requirement of the DPCIA because of its role in enforcing consumer protection laws. NMFS also enforces violations related to knowingly and willfully false statements by captains, observers/observer programs, importers, exporters, or processors, if used to support a dolphin-safe label under paragraph (d)(2)(B) of the DPCIA. The U.S. Customs Service and NMFS enforce tuna importation requirements and monitor compliance with the dolphin-safe labeling requirements.

Comment 33: One commenter does not understand why § 216.92(a) begins with the sentence ''For purposes of § 216.91(a)(3) ...'' rather than with the word ''Tuna.''

Response: NMFS agrees and has modified the sentence.

Comment 34: One commenter wanted clarification that non-dolphin-safe tuna, or tuna not accompanied by supporting documentation, could be imported and sold lawfully in the United States under the IDCPA, just not labeled as ''dolphin-safe.''

Response: Non-dolphin-safe tuna may be imported or sold in the United States under the IDCPA provided the tuna products were harvested in compliance with the IDCP by a vessel flagged with an IATTC member nation. All tuna imports must be accompanied by a completed Fisheries Certificate of Origin, NOAA Form 370. However, tuna products must have the documentation described in § 216.92 to be labeled ''dolphin-safe.''

Comment 35: One commenter indicated that the word ''or'' should be deleted between proposed §§ 216.92(b)(1)(i) and 216.92(b)(1)(ii) and the word ''and'' should be inserted. Another commenter suggested that the word ''or'' should be deleted to clarify the certifications required for tuna products harvested in the ETP by purse seine vessels greater than 400 st (362.8 mt) carrying capacity.

Response: NMFS has rewritten and restructured the certification provision to make it clearer.

Comment 36: One commenter indicated that § 216.92(b)(2) does not indicate that the initial finding effective date is the same as the effective date of the interim final rule. The final rule should indicate the actual date after which a certification under proposed § 216.92(b)(1)(i) is no longer required.

Response: NMFS agrees. The initial finding required by paragraph (g)(1) of the DPCIA becomes effective when this interim final rule becomes effective. The interim final rule now states that, for tuna harvested by large purse seine vessels in the ETP, a dolphin-safe label need not be supported by statements certifying ''no intentional encirclement during the trip'' as of the effective date of this rule. Of course, the standard could revert back, depending on the final finding that is required to be made by the year 2002.

Comment 37: Two commenters indicated that the proposed rule requires tuna canneries to establish separate production facilities, one for dolphin-safe tuna and one for non-dolphin-safe tuna, a practice which would impose prohibitive capital and operational costs. The commenters recommend separate production times to facilitate monitoring and verification.

Response: The proposed rule did not suggest that tuna canneries would be required to establish separate production facilities for dolphin-safe and non-dolphin-safe tuna. However, the rule does require separate production times for processing the different types of tuna.

Comment 38: Commenters expressed concern that changing the definition of dolphin-safe tuna from the old definition of ''no dolphins were intentionally set on to capture tuna'' to the new definition ''no dolphins were killed or seriously injured in the sets or other gear deployments in which the tuna were caught'' will be confusing to the general public. Moreover, commenters expressed the need to reserve the term ''dolphin-safe'' for tuna caught without any intentional encircling of dolphin.

Response: IDCPA mandates the change (for tuna harvested by large purse seine vessels in the ETP) unless the initial and/or final finding, based on NMFS' research, shows that intentional deployment on, or encirclement of, dolphins with purse seine nets ''is having a significant adverse impact'' on any depleted dolphin stock in the ETP. NMFS agrees that the public may be confused, and NMFS will make efforts to educate the public about the changes.

Comment 39: Commenters expressed a need for a certification system that will distinguish between tuna caught without intentionally encircling dolphins and tuna caught by intentionally encircling dolphins.

Response: NMFS disagrees. The IDCPA requires a domestic tuna tracking and verification system that provides for the effective tracking of tuna harvested in the ETP by U.S. and by foreign vessels that may be labeled as ''dolphin-safe,'' which, for tuna harvested by large purse seine vessels in the ETP currently, means ''no serious injury or mortality during sets.'' The IDCPA does not require the tuna tracking and verification program to distinguish between tuna caught by intentional encirclement of dolphin and tuna caught without the intentional encirclement of dolphin.

Comment 40: Some commenters indicated that the use of the term ''dolphin-safe'' is deceptive to the consumer since the term does not suggest that tuna can be labeled ''dolphin-safe'' even though dolphins may have been killed in the process of capturing the tuna.

Response: As required by the DPCIA, tuna product containing tuna harvested by large purse seine vessels in the ETP may only be labeled dolphin-safe if no dolphins were killed or seriously injured during the sets in which the tuna were caught.

Comment 41: One commenter indicated that as long as tuna is harvested in accordance with the IDCP, it should be labeled ''dolphin-safe.''

Response: NMFS lacks statutory authority to change the labeling standard to allow all tuna harvested in accordance with the IDCP to be labeled as ''dolphin-safe.''

Comment 42: One commenter opposes the importation of tuna into the United States that was caught by chasing or encircling dolphins.

Response: The IDCPA does not restrict ETP purse seine harvested tuna imported into the United States if the tuna is caught by a nation with an affirmative finding under MMPA § 101(a)(2)(B). Generally, a nation will qualify for an affirmative finding if tuna is caught in compliance with the Agreement on the IDCP, the harvesting nation is a member of the IATTC and meeting its financial obligations, and the nation does not exceed the total DMLs and per-stock per-year DMLs permitted for that nation's vessels under the IDCP. Furthermore, permitted U.S. vessels with DMLs are allowed to chase and encircle dolphins in the ETP under the IDCP.

Comment 43: One commenter believed that the term ''default standard'' (e.g., no intentional encirclement during a trip and no mortality and serious injury during sets) in the SUPPLEMENTARY INFORMATION section of the proposed rule should not be used since it implies that there is a baseline against which other standards will be compared.

Response: The ''default standard'' was a term used by NMFS in the proposed rule to differentiate between two possible dolphin-safe definitions under the DPCIA. The term was just an informal shorthand definition and was not intended to have any legal or policy significance. The term was not meant to imply that it was a comparison for other standards.

Comment 44: One commenter indicated that the preamble to the proposed rule should have used more precise language to describe that the ''no mortality or serious injury during the set'' standard of ''dolphin-safe'' would remain in effect unless the Secretary makes a finding that there *is* a significant adverse impact caused by the current fishing practices in the tuna purse seine fishery.

Response: NMFS agrees that, in trying to describe the process in plain English, the preamble description could have been more precise. The commenter's description is correct.

Comment 45: One commenter indicated that there should be an opportunity for public comment at the time the Secretary makes the final finding. Another commenter indicated that any required change in the labeling standard should be made without additional rulemaking.

Response: The Secretary will publish the final finding in the **Federal Register**. However, the process of publishing a finding does not constitute a formal rulemaking and, therefore, there will be no formal comment period. Depending on the final finding, the dolphin-safe labeling standard could change.

Comment 46: One commenter indicated that the intent of the Congress was to base the initial finding on a reasonable conclusion rather than on definitive proof.

Response: NMFS does not necessarily require definitive proof, but the Secretary would be able to make a finding that the intentional deployment on or encirclement of dolphins with purse seine nets ''is having a significant adverse impact'' on any depleted dolphin stock in the ETP only if sufficient evidence were available to conclude that the significant impact is due to the fishery.

Comments on Dolphin Mortality Limits

Comment 47: Two commenters indicated that it would be a violation of the IDCPA to lift tuna embargoes until the per-stock per-year limits have been adopted.

Response: Per-stock per-year limits have been adopted. The Meeting of the Parties agreed to a global allocation system that will establish a per-stock per-year DML in calendar year 2000, at a level of 0.2 percent of the minimum population estimate. If the IDCP allocates per-stock per-year DMLs to the national level, then an affirmative finding will require a nation's per-stock mortality to stay within its per-stock limits, as described in the response to Comment 7.

Comment 48: One commenter indicated that the Secretary should make a finding not only on whether there is a significant adverse impact on any depleted dolphin stock in the ETP, but also on whether there is a significant adverse impact on any marine mammal stock.

Response: Under paragraph (g) of the DPCIA (16 U.S.C. 1385(g)), the Secretary is required to make a finding only on whether the intentional deployment on or encirclement of dolphins with purse seine nets is having a significant adverse impact on any ''depleted dolphin stock'' in the ETP.

Comment 49: One commenter expressed concern that it is not practical for vessel permit holders to request second semester DMLs by September 1, of the year before, more than 6 months in advance. The commenter recommended changing the application deadline to April 1, 3 months before the second semester begins.

Response: NMFS recognizes the difficulty and inconvenience caused by requesting vessel permit holders to request a half-year DML by September 1, approximately 10 months in advance. Nevertheless, under the Agreement on the IDCP (Annex IV, section 1, paragraph 1), nations are required to submit second semester DML requests to the Meeting of the Parties prior to October 1. However, per-trip DMLs are available for vessels which do not normally fish for tuna in the ETP, but which may occasionally desire to participate in the fishery on a limited basis, provided that such vessels and operators meet the permit requirements under § 216.24(b).

Comment 50: Commenters indicated that the IDCPA encourages vessel captains to make at least one intentional set on dolphins every year before April 1, which creates a ''use or lose'' mentality. This language contradicts the intent of the IDCPA and penalizes captains who try to reduce dolphin mortality instead of providing rewards and incentives. The commenter stated that the language at § 216.24(c)(8)(iv) needs to be deleted.

Response: Under the Agreement on the IDCP (Annex IV, section II, paragraph 1), any vessel which is assigned a full-year DML must make at least one set on dolphins prior to April 1 to keep from losing its DML allocation. An intentional set on dolphins does not necessarily lead to dolphin mortality. In addition, this requirement is part of the process established by the international program for deterring frivolous requests.

Comment 51: One commenter suggested revising § 216.24(c)(8)(ii) to read, ''Each vessel permit holder that desires a DML only for the period July 1 to December 31, must provide to the Administrator, Southwest Region, by September 1, the name* * *. NMFS will forward the list of purse seine vessels to the Director of the IATTC on or before October 1 or as otherwise required by the IDCP for assignment of a DML for the 6 month period ...''

Response: NMFS agrees and has made the changes to accurately reflect the requirement under the Agreement on the IDCP to forward a list of purse seine vessels to the Director of the IATTC on or before October 1, rather than April 1, as proposed.

Comment 52: One commenter recommended rewarding skippers who do not use all of their DMLs by reallocating additional DMLs, taken from those vessels with the worst performance. Operator performance could be measured by kill rate per set or kill rate per ton.

Response: The Meeting of the Parties to the Agreement on the IDCP resolved to establish a working group to develop captain incentives. However, NMFS has not developed incentives to include in the interim final rule.

Comment 53: One commenter recommended that NMFS propose a system of incentives to vessel captains in this rule as required by the IDCPA that could be used as a model by the international community. The commenter stated that DMLs are not an effective incentive to achieve low dolphin mortality since DMLs are not performance-based and do not provide incentives for good performance to reach the zero dolphin mortality rate goal.

Response: Recently, the Meeting of the Parties established a working group of which the United States is a member to develop incentives and rewards to encourage vessel operators to lower dolphin mortality and serious injury.

Comment 54: One commenter recommended that NMFS should wait to incorporate the DML utilization standard that will be developed by IATTC staff and the International Review Panel (IRP) under the Agreement on the IDCP, rather than establish a utilization standard of its own (e.g., lose its DML and may not set on dolphins for the remainder of the year if no dolphin sets are made prior to April 1 of that year) and potentially undermine the IDCP.

Response: The language in the interim final rule reflects the current language in the Agreement on the IDCP and is consistent with the IDCPA.

Comment 55: One commenter indicated that the ''trading in'' of unused DMLs to vessels requesting a second semester DML is counter to the IDCPA intent to reduce dolphin mortality and serious injury to levels approaching zero.

Response: The procedure for issuing a second semester DML for the 6-month period July 1 to December 31, is in accordance with the procedure described in Annex IV of the Agreement on the IDCP and consistent with the goals of the IDCPA. In addition, second semester DMLs are only 2/3 of an annual DML.

Comment 56: One commenter strongly supported the provision that states, ''Any vessel that exceeds its assigned DML after any applicable adjustment under paragraph (c)(8)(v) of this section will have its DML for the subsequent year reduced by 150 percent of the overage.''

Response: NMFS agrees. This requirement is consistent with the Agreement on the IDCP, Annex IV, Section III, paragraph 6.

Comment 57: One commenter suggested the language, ''By March 15, the Administrator, Southwest Region shall notify the Director of the IATTC of any unused DML, that will be returned to the IDCP, to be added to the pool of unutilized DML'' at the end of § 216.24(c)(8)(iv).

Response: NMFS disagrees since under the Agreement on the IDCP, the Director of the IATTC will use data collected from the international observer program to determine whether any DMLs will not be used or whether any DMLs have been forfeited. In this case, the Administrator, Southwest Region will not need to notify the Director of the IATTC.

Comment 58: One commenter urged NMFS to delete the phrase ''or exceeded'' from paragraph 216.24(c)(8)(x)(A) (''when the vessel's DML, as adjusted, is reached or exceeded;'') to make it clear that once a vessel has reached its DML, the vessel and operator permit holders must not intentionally deploy a purse seine net on or encircle dolphins.

Response: NMFS disagrees. Although a vessel operator must not intentionally deploy a purse seine net on or encircle dolphins intentionally when the vessel's DML is reached, sometimes in a single set a vessel unintentionally exceeds its DML. If so, the vessel must stop fishing after the DML is ''exceeded.'' While this situation is discouraged and should be avoided, it is not in itself a violation of the IDCPA or the Agreement on the IDCP. In addition, as a penalty, the next year's DML for that vessel will be reduced by one and a half times the amount the previous year's DML was exceeded.

Comment 59: One commenter indicated that in paragraph 216.24(c)(8)(x)(B), the phrase ''in the absence of the notification to cease intentional sets on dolphins'' is confusing because it seems misplaced and suggested editing the paragraph.

Response: NMFS agrees and has deleted the phrase ''in the absence of the notification to cease intentional sets on dolphins'' since it does not provide any additional value to the paragraph.

Comments on Observers

Comment 60: Will observers provided by the Forum Fisheries Agency pursuant to the South Pacific Tuna Treaty be acceptable to the IATTC and NMFS for vessels fishing in the ETP whether or not the vessel intends to make intentional sets on dolphins?

Response: There is a provision in the Agreement on the IDCP that allows the Director of the IATTC to use a trained observer from another international program if the placement of an observer from the On-Board Observer Program is not practical and the vessel will not set on dolphins. However, Forum Fisheries Agency observers are not currently recognized by the Meeting of the Parties.

Comment 61: One commenter suggested modifying the language in the proposed rule to specify that the payment of observer placement fees are submitted to the Administrator, Southwest Region, and that the Administrator, Southwest Region will then forward the fees to the applicable international organization (e.g., the IATTC).

Response: The rule has been modified to indicate the fees for observer placement will be forwarded to the applicable international organization by the Administrator, Southwest Region.

Comment 62: One commenter indicated that the methods for communicating marine mammal mortality data by observers, as well as details as to whether the data will be coded or made secure in some other way, have yet to be finalized. Therefore,

the text under § 216.24(e)(2) ''Masters must allow observers to report, in coded form, information by radio concerning the take of marine mammals and other observer collected data upon request of the observer'' should be more general.

Response: NMFS agrees and has changed the language at § 216(e)(2) to read ''Masters must allow observers to use vessel communication equipment to report information concerning the take of marine mammals and other observer collected data upon request of the observer.''

Comment 63: One commenter felt that having observers collect information that may be used in civil or criminal penalty proceedings would jeopardize the safety of an observer and lead to data falsification.

Response: NMFS disagrees. NMFS has the authority to use observer data as evidence in civil or criminal cases and based on NMFS' experience observing U.S. tuna purse seine vessels from 1976 through 1995, using observer data during legal proceedings has not jeopardized the safety of an observer or led to data falsification.

Comment 64: One commenter objected to any type of national observer program being used other than the IATTC program as stated in § 216.24(b)(8)(ii).

Response: NMFS disagrees. The Agreement on the IDCP allows for each Party to maintain its own national observer program in accordance with the provisions of Annex II. However, at least 50 percent of the observers on the vessels of each Party shall be IATTC observers.

Comment 65: One commenter indicated that the observer reports are routinely falsified and that is the only reason the annual fishery-wide dolphin mortality statistics have appeared to drop below 5,000 animals.

Response: NMFS recognizes the possibility that the observer reports may be falsified, or incorrect for other reasons, and therefore continues to support and participate in the IRP's efforts to ensure observer objectivity and the collection of accurate and reliable scientific data.

Comments on Vessel and Operator Permits

Comment 66: One commenter suggested that a 45-day processing time for vessel permits and operator permits is excessive. In addition, the commenter expressed confusion why operators must attend a skipper education workshop if the vessel does not have a DML.

Response: NMFS would only require up to 45 days to process an application in the case where a captain must schedule a skipper education workshop to qualify for an operator permit or a vessel owner must schedule a vessel inspection of the required vessel gear and equipment to obtain a vessel permit. Although the focus of the skipper education workshop will be on dolphin safety requirements and the IDCP, the operator may accidentally encircle a marine mammal and needs to know the requirements for releasing the animal under the MMPA and the IDCP.

Comment 67: One commenter believes that NMFS should require the release of marine mammals incidentally caught in a purse seine net by a vessel that does not have a DML. The following language was suggested to bring the proposed regulations into conformance with the Agreement on the IDCP's requirement under Annex VIII, paragraph 4: ''Any vessel that captures marine mammals taken incidental to commercial fishing operations shall attempt to release the marine mammals using every means at its disposal, including aborting the set. Marine mammals shall be immediately returned to the environment where captured without further injury. The use of sharp or pointed instruments to remove any marine mammal from the net is prohibited.''

Response: Comparable language already exists in § 216.24(d) which requires incidentally taken marine mammals to be released using procedures such as hand rescue and aborting the set without further injury at the earliest effective opportunity.

Comment 68: One commenter indicated the proposed regulatory text pertaining to the observer fee is confusing and should be clarified in the final rule. In addition, the commenter indicated that it is not clear whether the vessel permit application would be considered adequate and complete if the observer fee had not been paid. Moreover, proposed § 216.24(b)(8)(ii) included confusing language about the time of the submission of the observer fee since the language did not appear to require the observer fee to actually be paid, but rather to the consent to payment of the fee. These issues need to be clarified in the final rule.

Response: NMFS has rewritten this section to clarify that the payment of observer fees is not required as part of the application process, but is required for the permit to be considered valid. Under the IDCPA, issuing a vessel permit and collecting observers fees are not dependent upon each other.

Comment 69: Some commenters took issue with the provision that enforcement action will not be taken if a prohibited marine mammal species is taken using a purse seine provided that the animals are not ''reasonably observable'' at the time the skiff attached to the net is released from the vessel at the start of a set and all the procedures required by the applicable regulations have been followed and recommended deleting the ''reasonably observable'' language from proposed § 216.24(c)(8)(ix).

Response: NMFS recognizes that occasionally a prohibited species is not detected prior to the time the skiff attached to the net is released from the vessel at the start of a set. To accommodate this unlikely event, NMFS is keeping the ''reasonably observable'' language in the regulatory text.

Comment 70: One commenter questioned whether it is the intent of NMFS to require a tuna purse seine vessel transiting the ETP to obtain a vessel permit if there is tuna aboard that was caught elsewhere (e.g., western Pacific) as indicated by § 216.24(a)(2)(ii) which states ''(ii) It is unlawful for any person using a United States purse seine fishing vessel * * * that does not have a valid permit obtained under these regulations to catch, possess, or land tuna if any part of the vessel's fishing trip is in the ETP.''

Response: Under § 216.24(a)(3), vessels may obtain a waiver from the prohibition to possess or land tuna within the ETP without a vessel permit by submitting a written request in advance of entering the ETP to the Assistant Administrator, Southwest Region.

Comment 71: One commenter believed that the language at § 216.24(b)(8)(v) regarding the data release form should be modified to clarify that by using a permit, the permit holder authorizes the release of all data collected by observers aboard tuna purse seine vessels to NMFS and the IATTC.

Response: NMFS agrees and has modified the language.

Comment 72: One commenter indicated § 216.24(b)(8)(vi) is unclear as written and needs to be rewritten.

Response: NMFS agrees and has rewritten the provision.

Comment 73: One commenter does not understand why the provision for the Administrator, Southwest Region to produce periodic status reports summarizing stock specific dolphin mortalities and serious injuries is included in the regulations under the permit section. In addition, the commenter indicated it would be helpful to ''explain'' in the preamble to

the final rule how frequently these reports are expected to be issued.

Response: The provision for the Administrator, Southwest Region to produce periodic status reports summarizing stock specific dolphin mortalities and serious injuries is included under the permit section of the regulations since the permits are what allow U.S. tuna purse seine fishing vessels in the ETP to incidentally take marine mammals during the course of commercial fishing operations. The reports are intended to provide a mechanism to disseminate information on the number and species of marine mammals killed or seriously injured under the issued permits. The Administrator, Southwest Region intends to issue these reports quarterly.

Comment 74: One commenter recommended inserting a cross reference in § 216.24(c)(3)(i) to indicate what the specific requirements and conditions are for purse seine nets, gear and equipment under the vessel inspection provision for vessel permit holders.

Response: NMFS agrees and has added the cross reference.

Comment 75: One commenter recommended rewriting the introductory sentence of § 216.24(c)(8)(viii) to read, ''It is unlawful for the holder of a vessel or operator permit to deploy ...''

Response: NMFS disagrees since similar language is included in § 216.24(a).

Comment 76: One commenter requested that § 216.24(d) explain how any accidental mortalities or serious injuries would be treated.

Response: NMFS disagrees that § 216.24(d) is the appropriate place to make that explanation. Under Annex IV, section I, paragraph 6 of the Agreement on the IDCP, incidental mortalities caused by tuna purse seine vessel permit holders operating in the ETP without an assigned DML shall be deducted from the Reserve DML Allocation set aside. Tuna harvested in a purse seine set in the ETP with an accidental dolphin mortality would be considered ''non-dolphin-safe.''

Comment 77: One commenter indicated that the language in 216.24(b)(1) seems to allow a vessel permit holder to transfer the vessel permit to a new owner when the vessel ownership changes, yet there is no language that requires the new owner to notify NMFS.

Response: Vessel permits are not transferable. The language in § 216.24(b)(1) has been modified by deleting ''except that a permit may be transferred to the new owner when the vessel ownership changes.''

Comment 78: One commenter indicated that the regulations do not require the vessel and operator permit applicant to use a standardized form, nor does there seem to be a requirement for the applicant to certify the accuracy of the information contained in the application. The commenter also believed that the application form or regulations should include language that states that, if the applicant knowingly or materially falsified the information contained in the application, the permit will be denied or revoked.

Response: Applicants are required to use standardized vessel and operator permit application forms approved by the Office of Management and Budget. The forms require the applicants to certify, under penalty of perjury, that the information is true and complete.

Comment 79: One commenter believes vessels that do not intentionally take marine mammals should be required to carry all the special dolphin safety equipment and gear (e.g., rafts and face masks) so that accidentally caught dolphins may be released using every means at its disposal. The commenter would like the regulations modified to require vessels that do not practice purse seining fish on dolphins to carry a raft and face masks.

Response: Although the use of a raft and face mask could facilitate the release of an accidentally caught dolphin, the IDCPA does not require vessels not fishing on dolphin and not assigned a DML to carry the equipment. Furthermore, since accidental sets are rare events and the vessel operator is required to use procedures such as hand release and aborting the set at the earliest effective opportunity to prevent injury, NMFS decided the vessel operator and owner should determine whether having a raft and face mask aboard the vessel might eliminate the need to abort a set under some circumstances. However, NMFS recommends the use of one or more rafts and face masks or view boxes to aid in the rescue of dolphins.

Comment 80: One commenter suggested that § 216.24(b)(4) should cross reference the vessel inspection provisions that will be used to verify whether the vessel possesses the required dolphin safety gear.

Response: NMFS does not think the cross reference is necessary since the vessel inspection provision at § 216.24(c)(3) contains a cross reference to the required gear and equipment necessary for a valid vessel permit.

Comments on Sundown Sets

Comment 81: Commenters felt NMFS' interpretation of section 303(a)(2)(B)(V) of the MMPA is contrary to the intent and meaning of the law. The law clearly states that backdown procedures must be completed 30 minutes before sundown, whereas the proposed rule would have required backdown to be completed 30 minutes after sundown. If NMFS believes that Congress erred, NMFS should seek an amendment to the statute, rather than promulgating regulations weaker than required by the law to fix a potential typographical error. NMFS also received comments in support of the proposed rule on sunset sets because the language of the rule is consistent with the Agreement on the IDCP.

Response: NMFS disagrees since the previous regulations, previous amendments to the MMPA, the La Jolla Agreement and the IDCP all specify that backdown procedures must be completed no later than one-half hour after sundown. Furthermore, under the Agreement on the IDCP, signatory nations agreed that the backdown procedure must be completed no later than one-half hour after sundown. Since no congressional reports or colloquy indicated that this ''revision'' was adopted purposefully, NMFS concludes the language in the IDCPA stating that backdown procedures must be completed no later than one-half hour before sundown must have been a drafting error.

Comment 82: One commenter felt that ''sufficiently in advance of sundown'' should be clearly defined as a period of time such as 2 hours.

Response: NMFS agrees and has determined that ''sufficiently in advance of sundown'' is if the seine skiff is let go 90 or more minutes before sunset. This is based on earlier analysis of the length of daytime sets in the U.S. fleet in the late 1980s. The analysis showed that 96 percent of the daytime sets took no more than 120 minutes from the time the seine skiff was let go until the completion of backdown.

Comments on Official and Alternative Marks

Comment 83: The regulations should allow for alternative marks in addition to the official mark. The regulations should allow alternative marks to use a tracking and verification system other than the official tracking system and a method for obtaining a determination from the agency that the proposed alternative tracking and verification program is comparable to the official program. Other commenters indicated

that a single tuna tracking and verification mechanism should be used.

Response: The proposed rule does not prevent the use of alternative marks or an alternative tracking system. However, all tuna imported, exported, or sold in the United States that was harvested by purse seine vessels greater than 400 st (362.8 mt) carrying capacity in the ETP must comply with the tracking and verification program described in this rule. Any dolphin-safe label, whether the official label or an alternative label, must comply with the labeling standards in paragraphs (d)(1) and (2) of the DPCIA. Under paragraph (f) of the DPCIA, NMFS is required to establish a tracking and verification system to support any dolphin-safe label under paragraph (d). In other words, an alternative mark would be required to be supported by the official tracking and verification program. Nothing in these regulations is intended to inhibit a company or group from establishing an alternative tracking and verification program, however, such a program would not be a substitute for the program described here.

Comment 84: One commenter suggested that NMFS include a provision in the regulations as follows: ''The Assistant Administrator may determine that an international tracking and verification program for certain tuna and tuna products meets or exceeds the minimum requirements for documentation set forth in § 216.94(b) upon a review of the program and written determination of approval and notice of that determination in the *Federal Register*. Upon publication of this notice, the Assistant Administrator will accept a determination by the approved program as satisfying the documentary evidence requirements of § 216.94(d). An approval of a program will remain in effect for the period of acceptance established by the Assistant Administrator, or until the Assistant Administrator determines that the program no longer qualifies for approval based upon new information or a lack of updated information. The Assistant Administrator will publish a notice in the **Federal Register** announcing any change in status of an approved program.''

Response: NMFS disagrees since these regulations do not include foreign tuna tracking and verification programs. However, certain commitments were made in the Tracking and Verification Working Group and by the Meeting of the Parties to comply with the Agreement on the IDCP system for tracking and verifying dolphin-safe tuna from non-dolphin-safe tuna from the time it is caught to the time it is ready for retail sale.

Comment 85: One commenter indicated that there should only be a single labeling standard and that no alternative labels should be permitted.

Response: There is only one currently applicable standard for dolphin-safe tuna (for ETP purse seine vessels: no dolphins were killed or seriously injured during the sets in which the tuna were caught). However, the IDCPA does allow for the use of alternative marks, and NMFS sees no basis for prohibiting the use of alternative marks.

Comment 86: One commenter felt that there is a distinction between ''alternate'' and ''alternative'' marks. An alternate mark could be used in conjunction with the official mark and an alternative mark could be used in lieu of the official mark.

Response: The IDCPA states that a tuna product that bears the official dolphin-safe mark shall not bear any other label or mark that refers to dolphins, porpoises, or marine mammals.

Comment 87: One commenter felt that the alternative mark must achieve a standard that, at a minimum, is equivalent to the official mark.

Response: NMFS agrees. Upon analysis of DPCIA paragraph (d)(3)(C), NMFS has concluded that the standards for using an alternative mark must meet, or exceed, the standards established for the official mark.

Comments on Tuna Tracking and Verification Program

Comment 88: One commenter expressed concern about the practicality of having the signed Tuna Tracking Form (TTF) delivered within 5 days of the end of the trip to the Regional Administrator, Southwest Region for remote or foreign ports. The commenter indicated that it may be unrealistic to have the form postmarked within 5 days of the end of the trip.

Response: In most cases, a representative of NMFS will meet the fishing vessel and receive the TTFs. In cases where the NMFS representative does not meet the vessel, the IATTC observer can deliver the TTFs to the IATTC office, and the forms can be forwarded to NMFS from that location within 5 working days of the end of the trip.

Comment 89: One commenter suggested including an explanation of ''fish condition'' similar to the explanation provided in 216.94(b)(5)(i) ''round, loin, dressed, gilled and gutted, other'' for § 216.94(b)(2) ''designation of each container, species, fish condition, and weight of tuna in each container'' and that the term ''fish condition'' be used consistently throughout the final rule. Another commenter suggested using the term ''fish status'' instead of the term ''fish condition.''

Response: NMFS agrees that the meaning of the term ''fish condition'' as it appears in § 216.94(b)(2) is not consistent with the meaning of the term as it appears in § 216.94(b)(5)(i). The term ''fish condition'' in § 216.94(b)(2) has been changed to ''product description.''

Comment 90: One commenter felt that it was premature to specifically define the details of the observer duties pertaining to the tracking and verification of tuna since the tracking program has not been finalized by the Parties to the Agreement on the IDCP.

Response: An international tracking and verification program using TTFs has been adopted by the Parties to the Agreement on the IDCP. At the second Meeting of the Parties, in June 1999, a tuna tracking and verification working group was created to develop the elements of the international tracking and verification program. Nevertheless, NMFS must develop a tuna tracking and verification program in order to implement the IDCPA. This interim final rule establishes a tuna tracking and verification program that is consistent, to the maximum extent practicable, with both the IDCPA and the international program.

Comment 91: One commenter suggested it might be appropriate for vessel owners to share the burden of maintaining trip report records in addition to exporters, transhippers, importers, and processors as described in § 216.94(d).

Response: Section 216.94 of the regulations does not impose reporting requirements, beyond the certification of TTFs, compelling vessel captains to maintain records. The on-board observer is responsible for maintaining the TTFs, which vessel captains are required to sign, until the end of the trip.

Comment 92: Two commenters believed that the regulations will lift the embargo on non-dolphin-safe tuna before an international tracking system is in place. Furthermore, it would be contrary to the requirements of the IDCPA to institute final implementing regulations allowing tuna imports before the international tracking and verification programs have been agreed to and are in place.

Response: An international tracking and verification program using TTFs has been adopted by the Parties to the IDCP. At the second Meeting of the Parties, a tuna tracking and verification working group was created to develop the

elements of the international tracking and verification program. In addition, nations must apply for and receive an affirmative finding under the IDCPA before tuna may be imported into the United States. To receive an affirmative finding, nations must submit documentary evidence that will allow the Secretary to make a determination of compliance with the IDCP.

Comment 93: One commenter recommended that a harvesting nation must have a tracking and verification system for all tuna it harvests, not just the tuna it imports.

Response: NMFS has no authority to require a nation to implement a tuna tracking and verification program. However, each party to the IDCP agreement is required to implement a tuna tracking and verification program in its respective territory, on vessels subject to its jurisdiction and in marine areas with respect to which it exercises sovereignty with respect to ETP harvested tuna. The U.S. tracking and verification plan includes all U.S. caught tuna and all tuna imported into the United States from the ETP.

Comment 94: One commenter indicated that there needs to be two certification processes to allow tuna to be imported into the United States. One certification would be for tuna caught by purse seine vessels fishing within the ETP and the other certification would be for tuna caught by purse seine vessels, or by other fisheries, outside the ETP.

Response: NMFS agrees. The NOAA Form 370, Certificate of Origin, allows for the appropriate certification of tuna, except fresh tuna, imported into the United States. The DPCIA and these regulations require different certifications for tuna harvested in different ocean areas and by different gear types.

Comment 95: One commenter indicated that § 216.93(b) would be clearer and conform better to other provisions of the proposed rule if it were revised to read: ''the documents are endorsed as required by § 216.92(a)(4) and the final processor delivers the endorsed documents to the Administrator, Southwest Region, or to the U.S. Customs Service.''

Response: NMFS agrees and has made the suggested change.

Comment 96: One commenter believed that it would be impractical for U.S. Customs to receive the Fisheries Certificate of Origin at the time of import because of existing duties and responsibilities of the U.S. Custom Service and limited available personnel. The commenter suggested that the importer retain the required documentation for later verification by either NMFS or U.S. Customs.

Response: NMFS has depended on U.S. Customs offices around the United States and in Puerto Rico for a number of years. Only the U.S. Customs Service can assure that the NOAA Form 370 accompanies imported shipments of tuna. Under the interim final rule, importers are required to include the NOAA Form 370, Certificate of Origin, with all other required import documents when the documents are filed with U.S. Customs. In addition, importers are required by §§ 216.94(d)(1) and 216.94(d)(2) to: (1) maintain their tuna import records for a period of 3 years, and (2) to provide copies of such records requested by the Administrator, Southwest Region within 30 days of receiving a written request.

Comment 97: One commenter asked whether the sentence in § 216.94, ''The tracking program includes procedures and reports for use when importing tuna into the U.S. and during domestic purse seine fishing, processing, and marketing into the U.S. and abroad ...'' was intended to include fishing by U.S. vessels in waters not subject to U.S. jurisdiction. If so, the commenter suggested it would be more accurate to revise this provision to read: ''during purse seine fishing operations by U.S. vessels ...''

Response: NMFS agrees that one could misunderstand ''domestic purse seine fishing'' to mean that vessels are fishing within the U.S. Exclusive Economic Zone; therefore, the requested change has been made.

Comment 98: Commenters indicated that the IDCPA does not sanction the collection of information about gear type and method of capture on the Fisheries Certificate of Origin. In addition, the collection of such information is contrary to the intent of the Panama Declaration and inconsistent with the IDCPA. Collecting such information on the Fisheries Certificate of Origin will undermine the IDCP. Finally, the regulations should not require observer data forms to accompany imported tuna.

Response: NMFS disagrees in part. Information collected on the Fisheries Certificate of Origin includes gear type because the use of some gear types indicates the tuna was not caught in association with dolphin, while the use of other gear types indicate interactions with dolphins (and require captain statements, etc.). Moreover, NMFS is not requiring observer data forms or TTFs to accompany imported tuna.

Comment 99: One commenter expressed concern that the proposed IATTC tracking system has no provisions for international inspections or enforcement.

Response: The international tracking and verification system approved by the Parties to the Agreement of the IDCP contains provisions for development of an international program to facilitate general reviews and spot checks of national tracking and verification programs. In addition, the Parties have agreed to make TTFs and documentation on national tracking and verification programs available to the IATTC's IRP. The IRP can then recommend a nation take enforcement action on a violation.

Comment 100: One commenter indicated that it is not clear what effort NMFS intends to undertake to observe and monitor offloading, deliveries, and processing of yellowfin tuna. It would be useful if NMFS were to provide an estimate of the effort (annual budget, total hours per year, percentage of off loadings and deliveries) expected to be made to track tuna under the tracking and verification program. If only a few off loadings are expected to be observed each year, then maybe the reporting burden to provide advance notice of the scheduled arrival in port may not be necessary.

Response: NMFS plans to monitor all off loadings by U.S. purse seine vessels fishing in the ETP and does not consider the time for a radio message and/or a phone call to be overly burdensome. NMFS requested and has received funding to operate the tuna tracking and verification program and hire two inspectors to monitor the unloading of tuna from U.S. tuna purse seine vessels.

Comment 101: One commenter indicated that the practicality of tracking tuna throughout a trip is not realistic for one observer. The commenter suggested mandatory use of wide-angle time-lapse cameras encoded with position data in addition to observers.

Response: NMFS disagrees since there is no data that supports the conclusion that any type of camera would be more efficient than a trained observer assigned to a vessel.

Comment 102: One commenter indicated NMFS should clarify that the requirement to notify NMFS at least 48 hours prior to unloading fish only pertains to U.S. vessels. In addition, the commenter indicated that NMFS does not have the authority to inspect and monitor U.S. vessels unloading in foreign nations because the Declaration of Panama and the Agreement on the IDCP (Article XVI paragraph 1) reserves the right to the sovereign territory to exercise enforcement authority.

Response: The 48 hour notification requirement pertains only to U.S. vessels subject to U.S. law. NMFS would not expect to be notified of vessel landings on foreign shores other than landings of U.S. flag vessels. However, through their adoption of an international tuna tracking and verification plan, the Parties to the IDCPA have indicated their willingness to cooperate with each other, including allowing a representative of the national authority under whose jurisdiction a fishing vessel operates to meet its flag vessels wherever they land to receive TTFs and observe the vessel unloading.

Comment 103: The reporting requirements of U.S. canneries should be clarified to indicate that the reporting requirement does not apply to non-U.S. canneries operating within the sovereign territory of another nation.

Response: The regulation, by virtue of the fact that it is a U.S. regulation, applies only to U.S. canneries.

Comment 104: One commenter indicated that the regulations should specify whether prohibited importations would be seized or exported back to the nation of origin.

Response: NMFS agrees. Under existing regulations (recodified here at § 216.24(f)(11)), fish that is denied entry and has not been exported under U.S. Customs supervision within 90 days from the date of notice of refusal of admission or date of redelivery shall be disposed of under Customs laws and regulations.

Comment 105: One commenter questioned whether the sentence in § 216.24(f)(2)(i), ''Yellowfin tuna harvested using a purse seine in the ETP, if exported from a nation with purse seine vessels that fish for tuna in the ETP, may not be imported into the United States unless the nation has an affirmative finding ...'' accurately reflects the requirements under the IDCPA and suggested that the provision should prohibit all tuna harvested by that nation, whether exported from that nation or an intermediary nation, or imported directly from the harvesting vessel to a U.S. processor.

Response: Section 101(a)(2)(B) of the MMPA clearly states that the import restrictions apply to ''yellowfin tuna harvested with purse seine nets in the eastern tropical Pacific Ocean.'' The purpose of § 216.24(f)(2)(i) is to present a list of Harmonized Tariff Schedule numbers for yellowfin tuna or tuna products that must be accompanied by a NOAA Form 370, Certificate of Origin. More detailed requirements for harvesting nations and intermediary nations importing yellowfin tuna harvested by purse seiners fishing in the ETP are codified at § 216.24(f)(9).

Comment 106: One commenter suggested referencing the effective date of the Agreement on the IDCP in §§ 216.24(f)(7)(i)(A) and 216.24(f)(7)(i)(C) to facilitate the application of the provision.

Response: NMFS agrees and has added the date that section 4 of the IDCPA became effective (March 3, 1999) to those paragraphs of the regulations. March 3 was the date that the Secretary of State certified that the Agreement on the IDCP was effective and in force.

Comments on Mixed Wells

Comment 107: Several commenters questioned NMFS' proposal to (1) allow mixed wells, containing both dolphin-safe and non-dolphin-safe tuna; (2) not require sealed wells or some other equally effective method for tracking and verifying the tuna caught in the ETP; and (3) not require monitoring and certifying of the caught tuna brought aboard the vessel and the loading of the wells below deck.

Response: NMFS disagrees. Under the DPCIA, the Secretary may make adjustments as appropriate to the regulations to implement an international tracking and verification program that meets or exceeds the minimum requirements established under the DPCIA. NMFS has determined that the U.S. tracking and verification program meets the minimum requirements. Sealing and unsealing wells during a trip does not provide additional confidence of the well contents than having an observer record the contents of the well during the loading process and during periodic inspections. The observer will record the information on the TTF. The likelihood of fish being transferred between wells is rare and does not support the need for placing one observer above deck and another observer below deck. Having two observers aboard a vessel would be cost prohibitive and redundant. The two mixed well exceptions were added by the Parties to the Agreement on the IDCP to accommodate rare occurrences in a reasonable manner. The IATTC is monitoring the occurrence of mixed wells and will report at its June 2000 meeting on the frequency of a mixed well event. If this monitoring shows that the frequency of mixed wells is not a rare event, NMFS will reconsider whether it will allow the use of mixed wells. Also, paragraph (f) of DPCIA requires regulations to address all those points, but not necessarily that NMFS implement each of them.

Comment 108: Commenters expressed concern that dolphin-safe tuna in mixed wells would be based on observers' estimates of weight and that no provision is made for how an observer will make a weight estimate of tuna and the accuracy of such an estimate. This procedure is not ''equally effective'' to having separate, sealed wells as envisioned by Congress. NMFS should amend the proposed rule to prohibit the mixing of tuna and to require sealed wells. Any non-dolphin-safe tuna dumped into a previously dolphin-safe well should be treated as ''non-dolphin-safe'' since the cannery will not be able to distinguish dolphin-safe tuna from non-dolphin-safe tuna during the canning of the tuna. The consumer cannot be guaranteed that a particular fish is ''dolphin-safe.''

Response: NMFS disagrees and has decided to allow the use of mixed wells under two very specific and limited circumstances. Occasionally, a well already designated as ''dolphin-safe'' and containing some amount of dolphin-safe tuna may be loaded with tuna caught in a set in which a dead or seriously injured dolphin is discovered during the loading process. Once such non-dolphin-safe tuna is loaded into the well, it is re-designated as a ''mixed'' well, and all tuna loaded into that well for the remainder of the trip is ''non-dolphin-safe.'' When the contents of such ''mixed well'' are unloaded, the tuna is weighed and separated according to the observer's report of the estimated weight of dolphin-safe and non-dolphin-safe tuna contained in that well. In addition, 15 percent of the dolphin-safe tuna will be designated as ''non-dolphin-safe'' at the time of unloading to provide a buffer between the dolphin-safe tuna and the non-dolphin-safe tuna. NMFS is allowing this exception, but will monitor the frequency of occurrence to determine whether this exception needs to be reconsidered. Moreover, as part of training, observers are taught to estimate the weight of fish loaded inside a brailer and the IATTC can provide the observer with information about the carrying capacity of the vessel and its wells. The second mixed well case would occur at the end of a trip if all available wells were used and an opportunity for one last set occurs. In this case dolphin-safe tuna could be loaded on top of non-dolphin-safe tuna provided a physical barrier such as netting is used to prevent the mixing of the non-dolphin-safe and dolphin-safe tuna. The use of mixed wells is consistent with the international tracking and verification program. Although there is no physical

barrier or other way of identifying a particular fish unloaded from a mixed well described in the first scenario as ''dolphin-safe,'' the 15 percent weight buffer establishes a safety margin to ensure non-dolphin-safe tuna is not labeled ''dolphin-safe,'' and it could compromise the quality of the fish.

Comment 109: One commenter indicated that the regulations should allow the observer to estimate the weight of loaded tuna and allow the operator to place a net or similar marker in the well to separate the dolphin-safe from the non-dolphin-safe tuna.

Response: Although the observer estimates the weight, species, and the status of fish loaded into each well, there are only two allowed circumstances for mixed wells. A net or similar marker may only be used to separate dolphin-safe tuna from non-dolphin-safe tuna during the last set of a trip when all the available wells are full, and there is an opportunity to load dolphin-safe tuna in a non-dolphin-safe designated well. Otherwise, indiscriminate use of nets or other materials throughout the wells could lead to confusion over what is ''dolphin-safe.''

Comments on Additional Topics

Comment 110: One commenter indicated that it would have been more accurate to state in the ''supplementary information'' section of the proposed rule that the annual dolphin mortality in the eastern Pacific Ocean had been reduced to below 5,000 animals by 1993, 6 years ahead of the schedule established under the La Jolla Agreement.

Response: NMFS agrees. The annual dolphin mortality in the ETP had been reduced to below 5,000 animals since 1993, 6 years ahead of the schedule established under the La Jolla Agreement.

Comment 111: One commenter indicated that the preamble of the proposed rule should have clearly indicated that the IDCP is in force by not using certain future tense verbs in the codified text of the rule.

Response: NMFS agrees.

Comment 112: One commenter asked why the difference in the definition of ''ETP'' between the DPCIA (east to 160° W) and the Agreement on the IDCP (east to 150° W) would not affect foreign vessels.

Response: Foreign vessels will not be affected by these regulations except when keeping records for dolphin-safe labels destined for the U.S. market and the harvests occur between 160° W and 150° W. However, tuna imports into the United States will be subject to the DPCIA's ETP definition. The DPCIA defines the ETP as the area of the Pacific Ocean bounded by the 160° West meridian, whereas the Agreement on the IDCP defines the ETP as the area of the Pacific Ocean west to the 150°. According to the IATTC observer data, no intentional sets have been made on dolphin west of 150° W.

Comment 113: One commenter suggested deleting the phrase, ''that would otherwise be under embargo'' from the sentence ''These regulations would allow the entry of yellowfin tuna into the United States under certain conditions from nations signatory to the IDCP that otherwise would be under embargo'' in the summary section of the proposed rule since it doesn't add any meaning to the sentence.

Response: NMFS agrees. The summary section for this interim final rule reads ''This interim final rule will allow the entry of yellowfin tuna into the United States under certain conditions from nations fully complying with the International Dolphin Conservation Program (IDCP).''

Comment 114: One commenter recommended expanding the penalties language codified at § 216.24(g) to include tuna imports and labeling violations.

Response: NMFS disagrees. 50 CFR 216.95, which is applicable to purse seine vessels greater than 400 st (362.8 mt) carrying capacity, specifically prohibits any person from making a knowing and willful false statement or false endorsement related to dolphin-safe tuna requirements, or the importation of dolphin-safe tuna, and specifies that a violator is liable for a civil penalty not to exceed $100,000. Labeling violations would be prosecuted by the Federal Trade Commission which is responsible for enforcing the Federal Trade Commission Act (FTCA) and the DPCIA which states that violations of the labeling standard are violations of the FTCA.

Comment 115: Several commenters indicated that the regulations must be made fully consistent with the Declaration of Panama and the IDCP Agreement.

Response: NMFS agrees and will follow the Agreement on the IDCP to the extent allowable under the IDCPA. NMFS presumes Congress intended the IDCPA to be consistent with the IDCP and Declaration of Panama.

Comment 116: One commenter suggested replacing the word ''skipjack'' with the words ''yellowfin tuna'' in the ''supplementary information'' of the proposed rule under the rubric for Harmonized Tariff Schedule Numbers ''For instance, a shipment of skipjack harvested by longline may require an FCO because the importer ...'' since skipjack tuna are not harvested by longline.

Response: NMFS disagrees because skipjack are occasionally caught using longline gear. The example is not used in the interim final rule.

Comment 117: One commenter indicated that the regulations should not be a forum to cover up the failure of the Clinton Administration to negotiate an agreement consistent with U.S. law.

Response: The Agreement on the IDCP is consistent with U.S. law.

Comment 118: One commenter suggested adding the phrases to the preamble discussion, ''Congress considered several bills to implement the Panama Declaration, ultimately passing the IDCPA. The IDCPA was signed into law on August 15, 1997. The IDCPA together with the Panama Declaration became the blueprint for the IDCP.'' to clarify the linkage between the IDCP and the IDCPA.

Response: NMFS has included this language in the background information for the interim final rule.

Comment 119: One commenter disagrees that the IDCPA was the domestic endorsement of an international management regime adopted during the last 20 years under the auspices of the IATTC. Instead, the IDCPA codified the La Jolla Agreement, incorporated provisions of the Panama Declaration, and set the stage for the new binding international agreement embodied in the IDCP.

Response: NMFS concurs although the La Jolla Agreement embodied a number of measures developed over many years of regulating the ETP fishery to reduce dolphin mortality.

Comment 120: One commenter indicated that the U.S. tuna purse seine fleet should be treated fairly and equitably in the U.S. regulations implementing the IDCPA.

Response: NMFS agrees.

Comment 121: One commenter indicated that the proposed rule fails to provide substantial background information about DOC's and NMFS' failure to abide by the clear intent of marine mammal protection law, multiple court rulings against NMFS' administration of the MMPA's tuna-dolphin provisions, public opposition to the DOC interpretation of the MMPA, and multiple amendments to the MMPA by Congress in order to force compliance by the DOC and NMFS.

Response: The historical information provided in the background section of the proposed rule focuses mainly on the

key events leading to the passage of the IDCPA.

Comment 122: One commenter indicated that it is wrong that Vice President Al Gore, Secretary of Commerce William Daley, and Secretary of the Interior Bruce Babbit actively campaigned for the passage of the IDCPA in Congress and now the DOC claims that the legislation mandates that the United States allow non-dolphin-safe tuna to be imported.

Response: This comment is not relevant to this rulemaking. The IDCPA does not completely prohibit the importation of non-dolphin-safe tuna into the United States but allows non-dolphin-safe tuna to be imported provided it was harvested in compliance with the IDCP by a vessel operating under the jurisdiction of a nation that is a member of the IATTC or has initiated an application to join the IATTC (and completes the process within 6 months).

Comment 123: One commenter indicated that the language in the proposed rule needs to be updated to reflect the current status with respect to the initial finding by the Secretary of Commerce and the international agreement signatory status.

Response: NMFS has updated all the sections in the interim final rule to reflect the current status of the initial finding (DPCIA paragraph (g)(1)) and the international agreement signatory status.

Comment 124: One commenter urged NMFS and the Department of State to renegotiate the Panama Declaration that has led to the redefinition of dolphin-safe tuna under the IDCP. The Panama Declaration undermines the MMPA and results in the injury and deaths of thousands of animals each year.

Response: NMFS does not agree. The IDCP provides a mechanism to reduce the level of incidental take of marine mammals associated with the yellowfin tuna purse seine fishery in the ETP to biologically sustainable levels. The comment is not focused on this rule per se, but it involves larger policy issues of international agreements and legislation.

Comment 125: One commenter requested clarification regarding when the coastal spotted dolphin was designated as depleted under the MMPA and the procedure by which such designation was made since the 1982 court ruling overturned the depleted status for this stock. If the coastal spotted dolphin is not officially depleted, the reference to the stock being depleted should be removed.

Response: NMFS designated the coastal spotted dolphin as depleted under the MMPA in **Federal Register** (45 FR 72178, Oct. 31, 1980). The court ruling did not overturn the depleted status but rather required NMFS to recalculate the population estimates. The depleted status was not changed after recalculating the coastal spotted dolphin stock population estimates.

Comment 126: One commenter indicated that the proposed regulation reflects a strong influence of foreign interests and illegal drug trafficking activity in the foreign tuna fishery and the governments involved.

Response: The regulations implement the IDCPA. NMFS does not know if any commenters are involved in illegal drug trafficking, but comments from foreign organizations and persons were received and considered. The rulemaking process itself was conducted in an open manner in accordance with the Administrative Procedure Act.

Comment 127: One commenter felt that the regulations significantly impact small businesses by placing the burden of supporting and promoting an alternative mark standard on the small canneries and wholesalers while the official mark standard is subsidized by tax dollars.

Response: Alternative marks will have to be supported by comparable tracking and verification programs, but NMFS disagrees with the characterization that the official mark is subsidized by tax dollars. The IDCPA requires NMFS to establish a mark for dolphin safe tuna. The program for tracking the mark consists primarily of information collected by the IATTC and IATTC approved national observer programs and cooperation of the canning and processing industry in maintaining appropriate documentation. For U.S. vessels and processors, these programs are entirely industry funded. There are no tax dollars being expended for these activities. NMFS is neither is funding nor supporting any promotion of the official dolphin safe mark. NMFS funds are being expended on staff to review and monitor documentation from these industry funded programs whether the information is submitted from the IDCP or alternate programs.

Comment 128: Some commenters requested that NMFS completely rewrite the proposed rule and submit the rule again for public comment, whereas other commenters praised NMFS for doing a good job drafting the rule.

Response: By publishing an interim final rule, NMFS will continue to accept additional public comments during a 90-day comment period while meeting programmatic and mission goals in a timely manner.

Comment 129: Commenters indicated that the proposed regulations try to implement international programs that have not yet been finalized by tuna treaty Parties.

Response: The regulations implement, in part, the Agreement on the IDCP, which has been ratified by fishing nations in the ETP such as Ecuador, El Salvador, Mexico, Nicaragua, Panama, Venezuela, and the United States.

Comment 130: Many commenters requested an extension for public comments of at least 30 days due to the technical and complex issues that require research and analysis.

Response: NMFS disagrees that this is necessary. By publishing an interim final rule, NMFS will continue to accept additional public comments for 90 days while meeting programmatic and mission goals in a timely manner. Furthermore, commenters who did request an extension submitted extensive and comprehensive comments.

Comment 131: One commenter disagreed with the proposed rule which allows a permit holder to injure or kill a marine mammal if the animal is causing or is about to cause immediate personal injury.

Response: This provision of the regulations is only a restatement of the statute. According to section 101(c) of the MMPA, if there is imminent danger to a person, a dolphin may be injured or killed to prevent injury or death of that person.

Comment 132: Commenters suggested that the term ''incidental take'' not be used in the ETP tuna fishery since the MMPA refers to takes as incidental or accidental to distinguish them from intentional takes. The commenter believes that if dolphin are deliberately set on by purse seiners then any take should be considered intentional.

Response: NMFS disagrees since Congress used this term to describe the ETP purse seine fishery in section 104(h) of the MMPA.

Comment 133: One commenter suggested inserting the word ''incidental'' into the phrase in the U.S. Citizens on Foreign Flag Vessels in the supplementary information of the proposed rule, ''A U.S. citizen employed on a foreign tuna purse seine vessel of a nation with an affirmative finding would not be subject to the MMPA's prohibition on incidental taking marine mammals while the vessel is engaged in fishing operations outside the U.S. EEZ ...'' to be consistent with the IDCPA.

Response: NMFS agrees that it is only ''incidental taking'' that is authorized.

Comment 134: NMFS received numerous editorial comments on

typographical errors and suggestions on sentence wording.

Response: NMFS incorporated many of the suggestions.

Comment 135: In a March 24, 1999 letter to Senator Barbara Boxer, the DOC stated that the final finding in 2001 would include a public comment period for substantive comments. In addition, the Secretary promised Members of Congress that future dolphin-safe label standards would be a formal rulemaking action. However, in the ''supplementary information'' section of the proposed rule (at page 31809 of the **Federal Register** document) the sentence ''The proposed regulations provide that, by notification in the **Federal Register**, the Assistant Administrator will implement any required change in the labeling standard without additional rulemaking ...,'' NMFS indicates that the Assistant Administrator will implement any required change in the labeling standard without additional rulemaking.

Response: NMFS will publish the final finding on whether the intentional deployment on, or encirclement of, dolphins with purse seine nets ''is having a significant adverse impact'' on any depleted dolphin stocks in the ETP between July 1, 2001, and December 31, 2002. There is no provision in the finding process to include public comment, and commenters apparently had a different understanding of the March 24 letter to Senator Boxer. In the response to Senator Barbara Boxer, NMFS indicated that supporting documentation for the initial finding and the research results as they become available would be posted on the Internet as at http://swfsc.ucsd.edu/IDCPA/IDCPAfront.html. In addition, NMFS indicated that, as usual, substantive comments on the initial finding will be considered throughout the remainder of the 3 year process toward the final determination. NMFS will accept public comment on changes to the dolphin-safe labeling standards under this interim final rule and any subsequent rulemakings.

Comment 136: One commenter felt that it was never the intent of Congress to require a high standard of proof that the tuna fishery is causing adverse impacts on the dolphin populations when making the initial and final finding, but rather to use the best available scientific information that clearly supports the conclusion that the two depleted stocks of dolphins are not recovering at the rate expected.

Response: Under the IDCPA, the Secretary is required to make findings regarding whether the intentional deployment on or encirclement of dolphins with purse seine nets is having a significant adverse impact on any depleted dolphin stock in the ETP. The finding shall be based on studies assessing the effect of intentional encirclement (including chase) on dolphins and dolphin stocks incidentally taken in the course of purse seine fishing for yellowfin tuna in the ETP, population abundance surveys, information obtained under the IDCP, and any other relevant information. NMFS has an obligation to conduct the research mandated by section 304(a) of the MMPA, and has an obligation to make the DPCIA findings using the best scientific information available at the time of the finding.

Changes From the Proposed Rule

Instead of publishing only the revised or new provisions of § 216.24, in the interim final rule, NMFS is publishing the revised § 216.24 in its entirety, for the convenience of readers, to correct cross-reference errors and to improve clarity. The interim final rule includes revised definitions for ''Fisheries Certificate of Origin,'' ''Import,'' and ''Tuna product.'' In addition, a definition for ''Serious injury'' was added in response to comments. The language pertaining to taking a marine mammal to protect crew members from personal injury that appeared in § 216.24(b)(vi) and § 216.24(b)(vii) has been removed since, under section 101(c) of the MMPA, all persons are allowed to take a marine mammal in self-defense or to save the life of a person in immediate danger. Under § 216.91(c) (labeling requirements) a paragraph was added to include the requirement in the DPCIA that any tuna product that is labeled with the official mark cannot be labeled with any other label or mark that refers to dolphins, porpoises, or marine mammals.

Changes to Affirmative Findings

Every 5 years, the government of a harvesting nation must request an affirmative finding and submit documentary evidence to the Assistant Administrator. In addition, the Assistant Administrator will continue to determine on an annual basis whether to make an affirmative finding to allow a nation to import ETP yellowfin tuna into the United States. The annual finding will be based mostly upon documentary evidence provided by the IATTC and the Department of State, although documentary evidence may also be requested from the government of the exporting nation or the government of the harvesting nation. Documentary evidence will need to be submitted by the harvesting nation for the first affirmative finding after the effective date of this interim final rule. Furthermore, NMFS has revised the affirmative finding criteria that require the annual total dolphin mortality of the nation's purse seine fleet not to exceed the aggregated total of the mortality limits assigned by the IDCP for the nations's purse seine vessels for the year preceding the year in which the finding would start. Under the revised language, nations could receive an affirmative finding if the total dolphin mortality of the nation's purse seine fleet exceeded the aggregated total of the mortality limits because of extraordinary circumstances beyond the control of the nation or vessel captains. However, the nation must immediately require all its vessels to cease fishing for tuna in association with dolphins for the remainder of the calendar year. In addition, nations may exceed the annual per-stock per-year limits assigned by the IDCP for that nation's purse seine vessels for the year preceding the year in which the finding would start provided there were extraordinary circumstances beyond the control of the nation or vessel captains that caused the per-stock per-year dolphin mortality to exceed the aggregated total of the per-stock per-year limits. Under this circumstance, the nation must immediately require all its vessels to cease fishing for tuna in association with dolphins for the remainder of the calendar year. Under these criteria, a nation will not be embargoed for exceeding its DML (e.g., by just one dolphin) if the nation is operating under the Agreement of the IDCP, and making good faith efforts to ensure compliance by all vessels operating under their flag. This flexibility will allow nations that are fully implementing the Agreement on the IDCP not to be embargoed if their DMLS are exceeded. This flexibility will encourage harvesting nations to comply with the Agreement on the IDCP, but it will threaten economic sanctions against nations that do not control or manage their own fleets.

Changes to Tuna Tracking and Verification

Instead of one rare event that would allow a mixed well to occur as described in the proposed rule, there are now two rare events in which mixed wells are allowed. In the first type of rare event described in the proposed rule where an observer has designated the set ''dolphin-safe,'' but during the loading process dolphin mortality or serious injury is identified, the dolphin-safe status of the set changes to non-dolphin-safe, and the well changes to a mixed well designation. Fifteen percent of the dolphin-safe tuna unloaded (by

weight) from this type of mixed well will be designated as ''non-dolphin-safe'' to provide a buffer between the dolphin-safe and non-dolphin-safe tuna loaded into the well.

The second rare event would occur near the end of an ETP fishing trip if the only well space available is in a non-dolphin-safe well, and there is an opportunity to make one last set. Dolphin-safe tuna caught in that set may be loaded into the non-dolphin-safe well provided the dolphin-safe tuna is kept physically separate from the non-dolphin-safe tuna using netting or similar material. This will allow vessels to return to port completely full without compromising the status of the dolphin-safe tuna aboard the vessel. Although there is no physical barrier or other way of identifying a particular fish unloaded from a ''mixed'' well described in the first scenario as ''dolphin-safe,'' the 15 percent weight buffer establishes a safety margin to ensure non-dolphin-safe tuna is not labeled ''dolphin-safe.'' In the second scenario, the use of a physical barrier such as netting is considered sufficient to ensure non-dolphin-safe tuna is not labeled ''dolphin-safe.'' The IATTC is monitoring the occurrence of mixed wells and will report at its June 2000 meeting on the frequency of a mixed well event. If this monitoring shows that the frequency of mixed wells is not a rare event, NMFS will reconsider whether it will allow the use of mixed wells.

Changes to the Tracking and Verification Program

The TTF developed by the IATTC will be used to track and verify tuna loaded as ''dolphin-safe'' and ''non-dolphin-safe'' aboard a vessel and will double as the captain and observer certifications that no dolphin were seriously injured or killed during the sets loaded in the dolphin-safe wells. Also, the TTF will confirm there was an observer approved by the IDCP aboard the vessel the entire trip. Two TTFs will be used for each trip: one for dolphin-safe sets and one for non-dolphin-safe sets. The two TTFs used on each trip will have a unique number assigned by the IATTC which will represent the cruise number assigned to the trip. The observer and vessel engineer will initial the entry after each set and the captain and observer will review and sign each TTF at the end of the fishing trip. The TTF will not include the set number as discussed in the proposed rule. The harvesting nation will retain the original TTF and the IATTC will receive a copy.

Another difference in the tuna tracking and verification program is that each national authority is responsible for the tracking and verification of dolphin-safe tuna when it enters a processing plant located within that nation, regardless of the flag of the harvesting vessel. In other words, if a U.S. vessel unloads tuna in Ecuador, Ecuador is responsible for the tracking and verification of dolphin-safe tuna throughout its processing facilities. A representative of the national authority will receive the original TTFs from the observer, and copies of the TTFs will be forwarded to the Administrator, Southwest Region. When ETP caught tuna is offloaded from an U.S. purse seiner in any port and subsequently loaded aboard a carrier vessel for transport to a cannery outside the jurisdiction of the United States, a NMFS representative may meet the vessel to receive the TTFs from the observer and monitor the offloading. The U.S. caught tuna becomes the tracking and verification responsibility of the foreign buyer when it is offloaded from the U.S. vessel. Imports of tuna harvested by large purse seine vessels greater than 400 st (362.8 mt) carrying capacity in the ETP and labeled ''dolphin-safe'' must be accompanied by Fisheries Certificate of Origin endorsements by importers, exporters, and processors attesting to the accuracy of the captain's and observer's statements.

Changes to Captain Certification and Observer Certification

The DPCIA paragraph (d)(2)(B)(i) requires that tuna or tuna products imported into the United States and labeled ''dolphin-safe'' must be accompanied by a written statement executed by the vessel captain providing a certification that no dolphins were killed or seriously injured during the sets in which the tuna were caught by purse seine vessel greater than 400 st (362.8 mt) carrying capacity in the ETP. NMFS has determined that there is a practical limitation on this certification that limits its utility as a mechanism to track dolphin-safe tuna. Therefore, NMFS has developed an alternative mechanism to achieve the intended purpose of this certification.

Prior to amendment by the IDCPA, the DPCIA, required the captain and observer certify that ''no tuna were caught on the trip in which such tuna were harvested using a purse seine net intentionally deployed on or to encircle dolphin.'' This certification followed the tuna through processing and import into the United States. At the time of importation, NMFS could determine that the product was ''dolphin-safe'' because the Fisheries Certificate of Origin contained information that allowed NMFS to determine which fishing vessels had contributed to the shipment and the captain and observer certifications applied to all the tuna on board each vessel for its referenced trip.

Under the amended DPCIA, the captain and observer are required to certify that no dolphin were killed or seriously injured in the sets in which the tuna were caught. The captain and observer are potentially verifying only a portion of the tuna on board the vessel is ''dolphin-safe.'' In the event that a dolphin is killed or seriously in a set, tuna from that set will be loaded into a non-dolphin-safe well for which there would be no certification. After the tuna is off loaded at a processing plant, the responsibility for ensuring dolphin-safe tuna are separated from non-dolphin-safe tuna transfers from the vessel captain and observer to the processor. Presenting captain and observer certification at the time of import does not provide sufficient information to allow NMFS to determine that the tuna in the shipment is dolphin-safe, because the captain's and observer's statements do not necessarily apply to all of the tuna in the shipment and there is no certification by the processor or government body of the exporting nation that ensures that non-dolphin-safe tuna were not mixed with dolphin-safe tuna during processing.

NMFS has developed the following strategy to ensure its capability to track dolphin-safe tuna and comply with the intent of the DPCIA. Each shipment of tuna imported to the United States will be required to be accompanied by documentation signed by a representative of the appropriate IDCP member nation certifying that there was an IDCP approved observer on board the vessel(s) during the trip(s) and that the tuna contained in the shipment were caught according to the dolphin-safe labeling standard. This documentation will also be required to include a list of TTFs for all trips from which tuna in the shipment were taken. This mechanism links the requirements of the DPCIA paragraph (d)(2)(B)(i) to the international tracking program agreed to by the Parties to the Agreement on the IDCP.

The international tracking and verification program to which the United States has agreed, as a Party of the IDCP, lays out a system to enable dolphin-safe tuna to be distinguished from non-dolphin-safe tuna from the time it is caught to the time it is ready for retail sale. The international system is based on TTFs. TTFs used during a fishing trip are identified by a unique

number. Dolphin-safe and non-dolphin-safe tuna caught in sets in the course of a trip are recorded on separate TTFs. At the end of each set the observer records and the chief engineer initials the date of the set, estimated weight of tuna loaded by species, and well location on the appropriate TTF. At the end of each fishing trip, when no more sets are to be made, the observer and the captain review the TTF(s), and both sign the forms. The signing of the dolphin-safe only form by the captain and observer certifies that no dolphins were killed or seriously injured in the sets in which the tuna were caught. NMFS has determined that these signatures constitute a certification that no dolphins were killed or seriously injured in the sets in which the tuna were caught and therefore meets the requirements of the DPCIA.

A copy of the TTF is sent to the IATTC by the national authority of each member nation that is a Party to the IDCP agreement. NMFS will rely on the documentation provided by the representative of the IDCP member nation and the cooperation of the IATTC to verify that dolphin-safe tuna imported from member nations is supported by TTFs containing the required certification that the tuna is from sets in which no dolphins were killed or seriously injured.

Public Comments Solicited

NMFS is soliciting comments on this interim final rule. Written comments on the interim final rule may be submitted to J. Allison Routt (see **ADDRESSES** and **DATES**).

Classification

Executive Order 12866

Pursuant to the procedures established to implement section 6 of E.O. 12866, this rule has been determined to be significant.

Regulatory Flexibility Act

The Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration when this rule was proposed that it would not have a significant economic impact on a substantial number of small entities. No comments were received regarding this certification. As a result, no regulatory flexibility analysis was prepared.

Paperwork Reduction Act

Notwithstanding any other provision of the law, no person is required to respond to, nor will any person be subject to a penalty for failure to comply with, a collection-of-information subject to the requirements of the Paperwork Reduction Act (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) control number.

This interim final rule contains collection-of-information requirements subject to the PRA. One existing requirement is repeated: exporters from all countries importing tuna and tuna products, except some fresh products, into the United States must provide information about the shipment to U.S. Customs using the Fisheries Certificate of Origin (NOAA Form 370). Approved under OMB control number 0648–0335, the public reporting burden for this collection is estimated to average 20 minutes per submission.

This interim final rule also contains new collection-of-information requirements. Approved under OMB control number 0648–0387, the public reporting burden for this collection is estimated to average as follows: 30 minutes for an application for a vessel permit; 10 minutes for an application for an operator permit; 30 minutes for a request for a waiver to transit the ETP without a permit; 10 minutes for a notification by a vessel permit holder 5 days prior to departure on a fishing trip; 10 minutes for the requirement that vessel permit holders who intend to make intentional sets on marine mammals must notify NMFS at least 48 hours in advance if there is a vessel operator change or within 72 hours if the change was made due to an emergency; 10 minutes for a notification by a vessel permit holder of any net modification at least 5 days prior to departure of the vessel; 15 minutes for a request for a DML; 20 hours for an experimental fishing operation waiver; 10 minutes for a notification by a captain; managing owner; or vessel agent 48 hours prior to arrival to unload; 1 hour for a captain to review and sign the TTF; 5 minutes for a captain to complete the dolphin-safe certification; 10 minutes for a notification by a cannery 24 hours prior to receiving a shipment of domestic or imported ETP caught tuna; 10 minutes for a cannery to provide the processor's receiving report; 10 minutes for a cannery to provide the processor's storage removal report; 1 hour for a cannery to provide the monthly cannery receipt report; 30 minutes for an exporter, transshipper, importer, or processor to produce records if requested by the Administrator, Southwest Region.

The preceding public reporting burden estimates for collections-of-information include time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding reporting burden estimates or any other aspect of the collection-of-information requirements in this interim rule, including suggestions for reducing the burdens to J. Allison Routt and to the Office of Information and Regulatory Affairs, OMB, (see **ADDRESSES**).

National Environmental Policy Act

NMFS prepared an EA for this interim final rule and the Assistant Administrator concluded that there will be no significant impact on the human environment as a result of this rule. A copy of the EA is available from NMFS (see **ADDRESSES**).

Endangered Species Act

NMFS prepared a biological opinion for this rule. NMFS concluded that fishing activities conducted under this interim final rule are not likely to jeopardize the continued existence of any endangered or threatened species under the jurisdiction of NMFS or result in the destruction or adverse modification of critical habitat. A copy of the biological opinion is available from NMFS (see **ADDRESSES**).

List of Subjects

15 CFR Part 902

Reporting and record keeping requirements.

50 CFR Part 216

Exports, Fish, Imports, Labeling, Marine mammals, Penalties, Reporting and record keeping requirements, Transportation.

Dated: December 21, 1999.

Penelope D. Dalton,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 15 CFR part 902 and 50 CFR part 216 are amended as follows:

15 CFR Chapter IX

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

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

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

2. In § 902.1, in paragraph (b) the table under 50 CFR, in the left column, remove the entry ''216.24(c)'' and, in the right column in the corresponding position, the control number ''–0083''; and add, in numeric order, the following entry to read as follows:

§ 902.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

* * * * *

(b) * * *

CFR part or section where the information collection requirement is located	Current OMB control number (All numbers begin with 064809)
* * * * *	
50 CFR	
* * * * *	
216.24	–0387
* * * * *	

* * * * * * *

50 CFR Chapter II

PART 216—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

3. The authority citation for part 216 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*, unless otherwise noted.

4. In § 216.3:

a. Remove the definitions—''ABI'', ''Director, Southwest Region'', ''ETP Fishing Area 1'', ''ETP Fishing Area 2'', ''ETP Fishing Area 3'', ''Fishing season'', ''Kill-per-set'', ''Kill-per-ton'', and ''Purse seine set on common dolphins'';

b. Revise the definitions–- ''Fisheries Certificate of Origin'', ''Import'', and ''Tuna product''; and

c. Add the definitions—''Administrator, Southwest Region'', ''Agreement on the International Dolphin Conservation Program (Agreement on the IDCP)'', ''Declaration of Panama'', ''Force majeure'', ''International Dolphin Conservation Program (IDCP)'', ''International Dolphin Conservation Program Act (IDCPA)'', ''International Review Panel (IRP)'', ''Per-stock per-year dolphin mortality limit'' and ''Serious injury'' in alphabetical order to read as follows:

§ 216.3 Definitions.

* * * * *

Administrator, Southwest Region means the Regional Administrator, Southwest Region, National Marine Fisheries Service, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213, or his or her designee.

Agreement on the International Dolphin Conservation Program (Agreement on the IDCP) means the Agreement establishing the formal binding IDCP that was signed in Washington, DC on May 21, 1998.

* * * * *

Declaration of Panama means the declaration signed in Panama City, Republic of Panama, on October 4, 1995.

* * * * *

Fisheries Certificate of Origin means NOAA Form 370, as described in § 216.24(f)(5).

* * * * *

Force majeure means forces outside the vessel operator's or vessel owner's control that could not be avoided by the exercise of due care.

* * * * *

Import means to land on, bring into, or introduce into, or attempt to land on, bring into, or introduce into, any place subject to the jurisdiction of the United States, whether or not such landing, bringing, or introduction constitutes an importation within the Customs laws of the United States; except that, for the purpose of any ban issued under 16 U.S.C. 1371(a)(2) on the importation of fish or fish products, the definition of ''import'' in § 216.24(f)(1)(ii) shall apply.

* * * * *

International Dolphin Conservation Program (IDCP) means the international program established by the agreement signed in La Jolla, California, in June 1992, as formalized, modified, and enhanced in accordance with the Declaration of Panama and the Agreement on the IDCP.

International Dolphin Conservation Program Act (IDCPA) means Public Law 105–42, enacted into law on August 15, 1997.

International Review Panel (IRP) means the International Review Panel established by the Agreement on the IDCP.

* * * * *

Per-stock per-year dolphin mortality limit means the maximum allowable number of incidental dolphin mortalities and serious injuries from a specified stock per calendar year, as established under the IDCP.

* * * * *

Serious injury means any injury that will likely result in mortality.

* * * * *

Tuna product means any food product processed for retail sale and intended for human or animal consumption that contains an item listed in § 216.24(f)(2)(i) or (ii), but does not include perishable items with a shelf life of less than 3 days.

* * * * *

5. Revise § 216.24 to read as follows:

§ 216.24 Taking and related acts incidental to commercial fishing operations by tuna purse seine vessels in the eastern tropical Pacific Ocean.

(a)(1) No marine mammal may be taken in the course of a commercial fishing operation by a United States purse seine fishing vessel in the ETP unless the taking constitutes an incidental catch as defined in § 216.3, and vessel and operator permits have been obtained in accordance with these regulations, and such taking is not in violation of such permits or regulations.

(2)(i) It is unlawful for any person using a United States purse seine fishing vessel of 400 short tons (st) (362.8 metric tons (mt)) carrying capacity or less to intentionally deploy a net on or to encircle dolphins, or to carry more than two speedboats, if any part of its fishing trip is in the ETP.

(ii) It is unlawful for any person using a United States purse seine fishing vessel of greater than 400 short tons (362.8 mt) carrying capacity that does not have a valid permit obtained under these regulations to catch, possess, or land tuna if any part of the vessel's fishing trip is in the ETP.

(iii) It is unlawful for any person subject to the jurisdiction of the United States to receive, purchase, or possess tuna caught, possessed, or landed in violation of paragraph (a)(2)(ii) of this section.

(iv) It is unlawful for a person subject to the jurisdiction of the United States to intentionally deploy a purse seine net on, or to encircle, dolphins from a vessel operating in the ETP when the DML assigned to that vessel has been reached, or when there is not a DML assigned to that vessel.

(3) Upon written request made in advance of entering the ETP, the limitations in paragraphs (a)(2)(i) and (a)(2)(ii) of this section may be waived by the Administrator, Southwest Region, for the purpose of allowing transit through the ETP. The waiver will provide, in writing, the terms and conditions under which the vessel must operate, including a requirement to report by radio to the Administrator, Southwest Region, the vessel's date of exit from or subsequent entry into the permit area.

(b) *Permits*—(1) *Vessel permit.* The owner or managing owner of a United States purse seine fishing vessel of greater than 400 st (362.8 mt) carrying capacity that participates in commercial fishing operations in the ETP must possess a valid vessel permit issued under this paragraph (b) of this section. This permit is not transferable and must be renewed annually. If a vessel permit holder surrenders his/her permit to the

Administrator, Southwest Region, the permit will not be returned and a new permit will not be issued before the end of the calendar year. Vessel permits are valid through December 31 of each year.

(2) *Operator permit.* The person in charge of and actually controlling fishing operations (hereinafter referred to as the operator) on a United States purse seine fishing vessel engaged in commercial fishing operations under a vessel permit must possess a valid operator permit issued under paragraph (b) of this section. Such permits are not transferable and must be renewed annually. To receive a permit, the operator must have satisfactorily completed all required training under paragraph (c)(4) of this section. The operator's permit is valid only when the permit holder is on a vessel with a valid vessel permit. Operator permits will be valid through December 31 of each year.

(3) *Possession and display.* A valid vessel permit issued pursuant to paragraph (b)(1) of this section must be on board the vessel while engaged in fishing operations, and a valid operator permit issued pursuant to paragraph (b)(2) of this section must be in the possession of the operator to whom it was issued. Permits must be shown upon request to NMFS enforcement agents, or to U.S. Coast Guard officers, or to designated agents of NMFS or the IATTC (including observers). A vessel owner or operator who is at sea on a fishing trip when his or her permit expires and to whom a permit for the next year has been issued may take marine mammals under the terms of the new permit without having to display it on board the vessel until the vessel returns to port.

(4) *Application for vessel permit.* The owner or managing owner of a purse seine vessel may apply for a vessel permit from the Administrator, Southwest Region, allowing at least 45 days for processing. The application must be signed by the applicant and contain:

(i) The name, official number, tonnage, carrying capacity in short or metric tons, maximum speed in knots, processing equipment, and type and quantity of gear, including an inventory of equipment required under paragraph (c)(2) of this section if the application is for purse seining involving the intentional taking of marine mammals, of the vessel that is to be covered under the permit;

(ii) A statement of whether the vessel will make sets involving the intentional taking of marine mammals;

(iii) The type and identification number(s) of Federal, State, and local commercial fishing licenses under which vessel operations are conducted, and the dates of expiration;

(iv) The name(s) of the operator(s) anticipated to be used; and

(v) The name of the applicant, whether he/she is the owner or the managing owner, his/her address, telephone and fax numbers, and, if applicable, the name, address, telephone and fax numbers of the agent or organization acting on behalf of the vessel.

(5) *Application for operator permit.* A person wishing to operate a purse seine vessel may apply for an operator permit from the Administrator, Southwest Region, allowing at least 45 days for processing. The application must be signed by the applicant or the applicant's representative, if applicable, and contain:

(i) The name, address, telephone and fax numbers of the applicant;

(ii) The type and identification number(s) of any Federal, state, and local fishing licenses held by the applicant;

(iii) The name of the vessel(s) on which the applicant anticipates serving as an operator; and

(iv) The date, location, and provider of any training for the operator permit.

(6) *Fees.* (i) *Vessel permit application fees.* An application for a permit under paragraph (b)(1) of this section must include a fee for each vessel as specified on the application form. The Assistant Administrator may change the amount of this fee at any time if a different fee is determined in accordance with the NOAA Finance Handbook and specified by the Administrator, Southwest Region, on the application form.

(ii) *Operator permit fee.* There is no fee for a operator permit under paragraph (b)(2) of this section. The Assistant Administrator may impose a fee or change the amount of this fee at any time if a different fee is determined in accordance with the NOAA Finance Handbook and specified by the Administrator, Southwest Region, on the application form.

(iii) *Observer placement fee.* The vessel permit holder must submit the fee for the placement of observers, as established by the IATTC or other approved observer program, to the Administrator, Southwest Region, by September 1 of the year prior to the year in which the vessel will be operated in the ETP. The Administrator, Southwest Region, will forward all observer placement fees to the IATTC or to the applicable international organization approved by the Administrator, Southwest Region.

(7) *Application approval.* The Administrator, Southwest Region, will determine the adequacy and completeness of an application and, upon determining that an application is adequate and complete, will approve that application and issue the appropriate permit, except for applicants having unpaid or overdue civil penalties, criminal fines, or other liabilities incurred in a legal proceeding.

(8) *Conditions applicable to all permits—* (i) *General Conditions.* Failure to comply with the provisions of a permit or with these regulations may lead to suspension, revocation, modification, or denial of a permit. The permit holder, vessel, vessel owner, operator, or master may be subject, jointly or severally, to the penalties provided for under the MMPA. Procedures governing permit sanctions and denials are found at subpart D of 15 CFR part 904.

(ii) *Observer placement.* By obtaining a permit, the permit holder consents to the placement of an observer on the vessel during every trip involving operations in the ETP and agrees to payment of the fees for observer placement. No observer will be assigned to a vessel unless that vessel owner has submitted payment of observer fees to the Administrator, Southwest Region. The observers may be placed under an observer program of NMFS, IATTC, or another international observer program approved by the IDCP and the Administrator, Southwest Region.

(iii) *Explosives.* The use of explosive devices is prohibited during all tuna purse seine operations that involve marine mammals.

(iv) *Reporting requirements.* (A) The vessel permit holder of each permitted vessel must notify the Administrator, Southwest Region or the IATTC contact designated by the Administrator, Southwest Region, at least 5 days in advance of the vessel's departure on a fishing voyage to allow for observer placement on every voyage.

(B) The vessel permit holder must notify the Administrator, Southwest Region, or the IATTC contact designated by the Administrator, Southwest Region, of any change of vessel operator at least 48 hours prior to departing on a trip. In the case of a change in operator due to an emergency, notification must be made within 72 hours of the change.

(v) *Data release.* By using a permit, the permit holder authorizes the release to NMFS and the IATTC of all data collected by observers aboard purse seine vessels during fishing trips under the IATTC observer program or another international observer program approved by the Administrator, Southwest Region. The permit holder must furnish the international observer

program with all release forms required to authorize the observer data to be provided to NMFS and the IATTC. Data obtained under such releases will be used for the same purposes as would data collected directly by observers placed by NMFS and will be subject to the same standards of confidentiality.

(9) *Mortality and serious injury reports.* The Administrator, Southwest Region, will provide to the public periodic status reports summarizing the estimated incidental dolphin mortality and serious injury by U.S. vessels of individual species and stocks.

(c) *Purse seining by vessels with DMLs.* In addition to the terms and conditions set forth in paragraph (b) of this section, any permit for a vessel to which a DML has been assigned under paragraph (c)(8) of this section and any operator permit when used on such a vessel are subject to the following terms and conditions:

(1) A vessel may be used to chase and encircle schools of dolphins in the ETP only under the immediate direction of the holder of a valid operator's permit.

(2) *No retention of Marine Mammals.* Except as otherwise authorized by a specific permit, marine mammals incidentally taken must be immediately returned to the ocean without further injury. The operator of a purse seine vessel must take every precaution to refrain from causing or permitting incidental mortality or serious injury of marine mammals. Live marine mammals must not be brailed, sacked up, or hoisted onto the deck during ortza retrieval.

(3) *Gear and equipment required for valid permit.* A vessel possessing a vessel permit for purse seining involving the intentional taking of marine mammals may not engage in fishing operations involving the intentional deployment of the net on or encirclement of dolphins unless it is equipped with a dolphin safety panel in its purse seine, has the other required gear and equipment, and uses the required procedures.

(i) *Dolphin safety panel.* The dolphin safety panel must be a minimum of 180 fathoms in length (as measured before installation), except that the minimum length of the panel in nets deeper than 18 strips must be determined in a ratio of 10 fathoms in length for each strip of net depth. It must be installed so as to protect the perimeter of the backdown area. The perimeter of the backdown area is the length of corkline that begins at the outboard end of the last bowbunch pulled and continues to at least two-thirds the distance from the backdown channel apex to the stern tiedown point. The dolphin safety panel must consist of small mesh webbing not to exceed 1 1/4 inches (3.18 centimeter (cm)) stretch mesh extending downward from the corkline and, if present, the base of the dolphin apron to a minimum depth equivalent to two strips of 100 meshes of 4 1/4 inches (10.80 cm) stretch mesh webbing. In addition, at least a 20-fathom length of corkline must be free from bunchlines at the apex of the backdown channel.

(ii) *Dolphin safety panel markers.* Each end of the dolphin safety panel and dolphin apron must be identified with an easily distinguishable marker.

(iii) *Dolphin safety panel hand holds.* Throughout the length of the corkline under which the dolphin safety panel and dolphin apron are located, hand hold openings must be secured so that they will not allow the insertion of a 1 3/8 inch (3.50 cm) diameter cylindrical-shaped object.

(iv) *Dolphin safety panel corkline hangings.* Throughout the length of the corkline under which the dolphin safety panel and dolphin apron are located, corkline hangings must be inspected by the vessel operator following each trip. Hangings found to have loosened to the extent that a cylindrical object with a 1 3/8 inch (3.50 cm) diameter can be inserted between the cork and corkline hangings, must be tightened so as not to allow the insertion of a cylindrical object with a 1 3/8 inch (3.50 cm) diameter.

(v) *Speedboats.* A minimum of three speedboats in operating condition must be carried. All speedboats carried aboard purse seine vessels and in operating condition must be rigged with tow lines and towing bridles or towing posts. Speedboat hoisting bridles may not be substituted for towing bridles.

(vi) *Raft.* A raft suitable to be used as a dolphin observation-and-rescue platform must be carried.

(vii) *Face mask and snorkel, or view box.* At least two face masks and snorkels or view boxes must be carried.

(viii) *Lights.* The vessel must be equipped with lights capable of producing a minimum of 140,000 lumens of output for use in darkness to ensure sufficient light to observe that procedures for dolphin release are carried out and to monitor incidental dolphin mortality.

(4) *Vessel inspection*—(i) *Annual.* At least once during each calendar year, purse seine nets and other gear and equipment required under § 216.24(c)(2) must be made available for inspection and for a trial set/net alignment by an authorized NMFS inspector or IATTC staff as specified by the Administrator, Southwest Region, in order to obtain a vessel permit.

(ii) *Reinspection.* Purse seine nets and other gear and equipment required by these regulations must be made available for reinspection by an authorized NMFS inspector or IATTC staff as specified by the Administrator, Southwest Region. The vessel permit holder must notify the Administrator, Southwest Region, of any net modification at least 5 days prior to departure of the vessel in order to determine whether a reinspection or trial set/net alignment is required.

(iii) Upon failure to pass an inspection or reinspection, a vessel may not engage in purse seining involving the intentional taking of marine mammals until the deficiencies in gear or equipment are corrected as required by NMFS.

(5) *Operator permit holder training requirements.* An operator must maintain proficiency sufficient to perform the procedures required herein, and must attend and satisfactorily complete a formal training session approved by the Administrator, Southwest Region, in order to obtain his or her permit. At the training session an attendee will be instructed on the relevant provisions and regulatory requirements of the MMPA and the IDCP, and the fishing gear and techniques that are required for, or will contribute to, reducing serious injury and mortality of dolphin incidental to purse seining for tuna. Operators who have received a written certificate of satisfactory completion of training and who possess a current or previous calendar year permit will not be required to attend additional formal training sessions unless there are substantial changes in the relevant provisions or implementing regulations of the MMPA or the IDCP, or in fishing gear and techniques. Additional training may be required for any operator who is found by the Administrator, Southwest Region, to lack proficiency in the required fishing procedures or familiarity with the relevant provisions or regulations of the MMPA or the IDCP.

(6) *Marine mammal release requirements.* All operators must use the following procedures during all sets involving the incidental taking of marine mammals in association with the capture and landing of tuna.

(i) *Backdown procedure.* Backdown must be performed following a purse seine set in which dolphins are captured in the course of catching tuna, and must be continued until it is no longer possible to remove live dolphins from the net by this procedure. At least one crewman must be deployed during backdown to aid in the release of dolphins. Thereafter, other release

procedures required will be continued so that all live dolphins are released prior to the initiation of the sack-up procedure.

(ii) *Prohibited use of sharp or pointed instrument.* The use of a sharp or pointed instrument to remove any marine mammal from the net is prohibited.

(iii) *Sundown sets prohibited.* On every set encircling dolphin, the backdown procedure must be completed no later than one-half hour after sundown, except as provided here. For the purpose of this section, sundown is defined as the time at which the upper edge of the sun disappears below the horizon or, if the view of the sun is obscured, the local time of sunset calculated from tables developed by the U.S. Naval Observatory or other authoritative source approved by the Administrator, Southwest Region. A sundown set is a set in which the backdown procedure has not been completed and rolling the net to sack-up has not begun within one-half hour after sundown. Should a set extend beyond one-half hour after sundown, the operator must use the required marine mammal release procedures including the use of the high intensity lighting system. In the event a sundown set occurs where the seine skiff was let go 90 or more minutes before sundown, and an earnest effort to rescue dolphins is made, the International Review Panel of the IDCP may recommend to the United States that in the view of the International Review Panel, prosecution by the United States is not recommended. Any such recommendation will be considered by the United States in evaluating the appropriateness of prosecution in a particular circumstance.

(iv) *Dolphin safety panel.* During backdown, the dolphin safety panel must be positioned so that it protects the perimeter of the backdown area. The perimeter of the backdown area is the length of corkline that begins at the outboard end of the last bow bunch pulled and continues to at least two-thirds the distance from the backdown channel apex to the stern tiedown point.

(7) *Experimental fishing operations.* The Administrator, Southwest Region, may authorize experimental fishing operations, consistent with the provisions of the IDCP, for the purpose of testing proposed improvements in fishing techniques and equipment that may reduce or eliminate dolphin mortality or serious injury, or do not require the encirclement of dolphins in the course of fishing operations. The Administrator, Southwest Region, may waive, as appropriate, any requirements of this section except DMLs and the obligation to carry an observer.

(i) A vessel permit holder may apply to the Administrator, Southwest Region, for an experimental fishing operation waiver allowing for processing no less than 90 days before the date the proposed operation is intended to begin. An application must be signed by the permitted operator and contain:

(A) The name(s) of the vessel(s) and the vessel permit holder(s) to participate;

(B) A statement of the specific vessel gear and equipment or procedural requirement to be exempted and why such an exemption is necessary to conduct the experiment;

(C) A description of how the proposed modification to the gear and equipment or procedures is expected to reduce incidental mortality or serious injury of marine mammals;

(D) A description of the applicability of this modification to other purse seine vessels;

(E) The planned design, time, duration, and general area of the experimental operation;

(F) The name(s) of the permitted operator(s) of the vessel(s) during the experiment; and

(G) A statement of the qualifications of the individual or company doing the analysis of the research.

(ii) The Administrator, Southwest Region, will acknowledge receipt of the application and, upon determining that it is complete, will publish a notice in the **Federal Register** summarizing the application, making the full application available for inspection and inviting comments for a minimum period of 30 days from the date of publication.

(iii) The Administrator, Southwest Region, after considering the information in the application and the comments received on it, will either issue a waiver to conduct the experiment which includes restrictions or conditions deemed appropriate, or deny the application, giving the reasons for denial.

(iv) A waiver for an experimental fishing operation will be valid only for the vessels and operators named in the permit, for the time period and areas specified, for trips carrying an observer designated by the Administrator, Southwest Region, when all the terms and conditions of the permit are met.

(v) The Administrator, Southwest Region, may suspend or revoke an experimental fishing waiver in accordance with 15 CFR part 904 if the terms and conditions of the waiver or the provisions of the regulations are not followed.

(8) *Operator permit holder performance requirements.* [Reserved]

(9) *Vessel permit holder dolphin mortality limits.* For purposes of this paragraph, the term ''vessel permit holder'' includes both the holder of a current vessel permit and also the holder of a vessel permit for the following year.

(i) By September 1 each year, a vessel permit holder desiring a DML for the following year must provide to the Administrator, Southwest Region, the name of the United States purse seine fishing vessel(s) of carrying capacity greater than 400 st (362.8 mt) carrying capacity that the owner intends to use to intentionally deploy purse seine fishing nets in the ETP to encircle dolphins in an effort to capture tuna during the following year. NMFS will forward the list of purse seine vessels to the Director of the IATTC on or before October 1, or as otherwise required by the IDCP, for assignment of a DML for the following year under the provisions of Annex IV of the Agreement on the IDCP.

(ii) Each vessel permit holder that desires a DML only for the period between July 1 to December 31 must provide the Administrator, Southwest Region, by September 1 of the prior year, the name of the United States purse seine fishing vessel(s) of greater than 400 st (362.8 mt) carrying capacity that the owner intends to use to intentionally deploy purse seine fishing nets in the ETP to encircle dolphins in an effort to capture tuna during the period. NMFS will forward the list of purse seine vessels to the Director of the IATTC on or before October 1, or as otherwise required under the IDCP, for possible assignment of a DML for the 6-month period July 1 to December 31. Under the IDCP, the DML will be calculated by the IDCP from any unutilized pool of DMLs in accordance with the procedure described in Annex IV of the Agreement on the IDCP and will not exceed one-third of an unadjusted full-year DML as calculated by the IDCP.

(iii)(A) The Administrator, Southwest Region, will notify vessel owners of the DML assigned for each vessel for the following year, or the second half of the year, as applicable.

(B) The Administrator, Southwest Region, may adjust the DMLs in accordance with Annex IV of the Agreement on the IDCP. All adjustments of full-year DMLs will be made before January 1, and the Administrator, Southwest Region, will notify the Director of the IATTC of any adjustments prior to a vessel departing on a trip using its adjusted DML. The

notification will be no later than February 1 in the case of adjustments to full-year DMLs, and no later than May 1 in the case of adjustments to DMLs for the second half of the year.

(C) Within the requirements of Annex IV of the Agreement on the IDCP, the Administrator, Southwest Region, may adjust a vessel's DML if it will further scientific or technological advancement in the protection of marine mammals in the fishery or if the past performance of the vessel indicates that the protection or use of the yellowfin tuna stocks or marine mammals is best served by the adjustment, within the mandates of the MMPA. Experimental fishing operation waivers or scientific research permits will be considered a basis for adjustments.

(iv)(A) A vessel assigned a full-year DML that does not make a set on dolphins by April 1 or that leaves the fishery will lose its DML for the remainder of the year, unless the failure to set on dolphins is due to *force majeure* or other extraordinary circumstances as determined by the International Review Panel.

(B) A vessel assigned a DML for the second half of the year will be considered to have lost its DML if the vessel has not made a set on dolphins before December 31, unless the failure to set on dolphins is due to *force majeure* or extraordinary circumstances as determined by the International Review Panel.

(C) Any vessel that loses its DML for 2 consecutive years will not be eligible to receive a DML for the following year.

(D) NMFS will determine, based on available information, whether a vessel has left the fishery.

(*1*) A vessel lost at sea, undergoing extensive repairs, operating in an ocean area other than the ETP, or for which other information indicates will no longer be conducting purse seine operations in the ETP for the remainder of the period covered by the DML will be determined to have left the fishery.

(*2*) NMFS will make all reasonable efforts to determine the intentions of the vessel owner, and the owner of any vessel that has been preliminarily determined to have left the fishery will be provided notice of such preliminary determination and given the opportunity to provide information on whether the vessel has left the fishery prior to NMFS making a final determination under 15 CFR part 904 and notifying the IATTC.

(v) Any vessel that exceeds its assigned DML after any applicable adjustment under paragraph (c)(8)(iii) of this section will have its DML for the subsequent year reduced by 150 percent of the overage, unless another adjustment is determined by the International Review Panel.

(vi) A vessel that is covered by a valid vessel permit and that does not normally fish for tuna in the ETP but desires to participate in the fishery on a limited basis may apply for a per-trip DML from the Administrator, Southwest Region, at any time, allowing at least 60 days for processing. The request must state the expected number of trips involving sets on dolphins and the anticipated dates of the trip or trips. The request will be forwarded to the Director of the IATTC for processing in accordance with Annex IV of the Agreement on the IDCP. A per-trip DML will be assigned if one is made available in accordance with the terms of Annex IV of the IDCP. If a vessel assigned a per-trip DML does not set on dolphins during that trip, the vessel will be considered to have lost its DML unless this was a result of *force majeure* or other extraordinary circumstances as determined by the International Review Panel. After two consecutive losses of a DML, a vessel will not be eligible to receive a DML for the next fishing year.

(vii) Observers will make their records available to the vessel operator at any reasonable time, including after each set, in order for the operator to monitor the balance of the DML(s) remaining for use.

(viii) Vessel and operator permit holders must not deploy a purse seine net on or encircle any school of dolphins containing individuals of a particular stock of dolphins:

(A) when the applicable per-stock per-year dolphin mortality limit for that stock of dolphins (or for that vessel, if so assigned) has been reached or exceeded; or

(B) after the time and date provided in actual notification or notification in the **Federal Register** by the Administrator, Southwest Region, based upon the best available evidence, stating when any applicable per-stock per-year dolphin mortality limit has been reached or exceeded, or is expected to be reached in the near future.

(ix) If individual dolphins belonging to a stock that is prohibited from being taken are not reasonably observable at the time the net skiff attached to the net is released from the vessel at the start of a set, the fact that individuals of that stock are subsequently taken will not be cause for enforcement action provided that all procedures required by the applicable regulations have been followed.

(x) Vessel and operator permit holders must not intentionally deploy a purse seine net on or encircle dolphins intentionally:

(A) when the vessel's DML, as adjusted, is reached or exceeded; or

(B) after the date and time provided in actual notification by letter, facsimile, radio, or electronic mail, or notice in the **Federal Register** by the Administrator, Southwest Region, based upon the best available evidence, that intentional sets on dolphins must cease because the total of the DMLs assigned to the U.S. fleet has been reached or exceeded, or is expected to be exceeded in the near future.

(xi) Sanctions recommended by the International Review Panel for any violation of these rules will be considered by NMFS and NOAA in enforcement actions brought under these regulations.

(xii) Intentionally deploying a purse seine net on, or to encircle, dolphins after a vessel's DML, as adjusted, has been reached will disqualify the vessel from consideration for a DML for the following year. If already assigned, the DML for the following year will be withdrawn, and the Director of the IATTC will be notified by NMFS that the DML assigned to that vessel will be unutilized. Procedures found at 15 CFR part 904 apply to the withdrawal of the permit.

(d) *Purse seining by vessels without assigned DMLs.* In addition to the requirements of paragraph (b) of this section, a vessel permit used for a trip not involving an assigned DML and the operator's permit when used on such a vessel are subject to the following terms and conditions: a permit holder may take marine mammals provided that such taking is an accidental occurrence in the course of normal commercial fishing operations and the vessel does not intentionally deploy its net on, or to encircle, dolphins; marine mammals taken incidental to such commercial fishing operations must be immediately returned to the environment where captured without further injury, using release procedures such as hand rescue, and aborting the set at the earliest effective opportunity; the use of one or more rafts and face masks or view boxes to aid in the rescue of dolphins is recommended.

(e) *Observers*: (1) The holder of a vessel permit must allow an observer duly authorized by the Administrator, Southwest Region, to accompany the vessel on all fishing trips in the ETP for the purpose of conducting research and observing operations, including collecting information that may be used in civil or criminal penalty proceedings, forfeiture actions, or permit sanctions. A vessel that fails to carry an observer in

accordance with these requirements may not engage in fishing operations.

(2) Research and observation duties will be carried out in such a manner as to minimize interference with commercial fishing operations. Observers must be provided access to vessel personnel and to dolphin safety gear and equipment, electronic navigation equipment, radar displays, high powered binoculars, and electronic communication equipment. The navigator must provide true vessel locations by latitude and longitude, accurate to the nearest minute, upon request by the observer. Observers must be provided with adequate space on the bridge or pilothouse for clerical work, as well as space on deck adequate for carrying out observer duties. No vessel owner, master, operator, or crew member of a permitted vessel may impair, or in any way interfere with, the research or observations being carried out. Masters must allow observers to use vessel communication equipment to report information concerning the take of marine mammals and other observer collected data upon request of the observer.

(3) Any marine mammals killed during fishing operations that are accessible to crewmen and requested from the permit holder or master by the observer must be brought aboard the vessel and retained for biological processing, until released by the observer for return to the ocean. Whole marine mammals or marine mammal parts designated as biological specimens by the observer must be retained in cold storage aboard the vessel until retrieved by authorized personnel of NMFS or the IATTC when the vessel returns to port for unloading.

(4) It is unlawful for any person to forcibly assault, impede, intimidate, interfere with, or to influence or attempt to influence an observer, or to harass (including sexual harassment) an observer by conduct which has the purpose or effect of unreasonably interfering with the observer's work performance, or which creates an intimidating, hostile, or offensive environment. In determining whether conduct constitutes harassment, the totality of the circumstances, including the nature of the conduct and the context in which it occurred, will be considered. The determination of the legality of a particular action will be made from the facts on a case-by-case basis.

(5)(i) All observers must be provided sleeping, toilet and eating accommodations at least equal to that provided to a full crew member. A mattress or futon on the floor or a cot is not acceptable in place of a regular bunk. Meal and other galley privileges must be the same for the observer as for other crew members.

(ii) Female observers on a vessel with an all-male crew must be accommodated either in a single-person cabin or, if reasonable privacy can be ensured by installing a curtain or other temporary divider, in a two-person cabin shared with a licensed officer of the vessel. If the cabin assigned to a female observer does not have its own toilet and shower facilities that can be provided for the exclusive use of the observer, then a schedule for time-sharing common facilities must be established before the placement meeting and approved by NMFS or other approved observer program and must be followed during the entire trip.

(iii) In the event there are one or more female crew members, the female observer must be provided a bunk in a cabin shared solely with female crew members, and provided toilet and shower facilities shared solely with these female crew members.

(f) *Importation, purchase, shipment, sale and transport.* (1)(i) It is illegal to import into the United States any fish, whether fresh, frozen, or otherwise prepared, if the fish have been caught with commercial fishing technology that results in the incidental kill or incidental serious injury of marine mammals in excess of that allowed under this part for U.S. fishermen, or as specified at paragraphs (f)(7) through (f)(9) of this section.

(ii) For purposes of this paragraph(f), and in applying the definition of an ''intermediary nation,'' an import occurs when the fish or fish product is released from a nation's Customs' custody and enters into the territory of the nation. For other purposes, ''import'' is defined in § 216.3.

(2)(i) *HTS numbers requiring a Fisheries Certificate of Origin, subject to yellowfin tuna embargo.* The following U.S. Harmonized Tariff Schedule (HTS) numbers identify yellowfin tuna or yellowfin tuna products that are harvested in the ETP purse seine fishery and imported into the United States. All shipments containing tuna or tuna products imported into the United States under these HTS numbers must be accompanied by a Fisheries Certificate of Origin (FCO), NOAA Form 370. Yellowfin tuna identified by any of the following HTS numbers that was harvested using a purse seine in the ETP may not be imported into the United States unless both the nation with jurisdiction over the harvesting vessel and the exporting nation (if different) have an affirmative finding under paragraph (f)(9) of this section.

(A) *Frozen*:	
0303.42.0020	Yellowfin tuna, whole, frozen.
0303.42.0040	Yellowfin tuna, eviscerated, head on, frozen.
0303.42.0060	Yellowfin tuna, other, frozen.
(B) *Canned*:	
1604.14.1000	Tuna, non-specific, in airtight containers, in oil.
1604.14.2040	Tuna, other than albacore, not over 7kg, in airtight containers.
1604.14.3040	Tuna, other than albacore, in airtight containers, not in oil, over quota.
(C) *Loins*:	
1604.14.4000	Tuna, not in airtight containers, not in oil, over 6.8kg.
1604.14.5000	Tuna, other, not in airtight containers.
(D) *Other (only if the product contains tuna)*:	
0304.10.4099	Other fish, fillets and other fish meat, fresh or chilled.
0304.20.2066	Other fish, fillets, skinned, in blocks weighing over 4.5kg, frozen.
0304.20.6096	Other fish, fillets, frozen.
0304.90.1089	Other fish meat, in bulk or immediate containers, fresh or chilled.
0304.90.9091	Other fish meat, fresh or chilled.

(ii) *HTS numbers requiring a Fisheries Certificate of Origin, not subject to yellowfin tuna embargo.* The following HTS numbers identify tuna or tuna products, other than fresh tuna or tuna identified in paragraph (f)(2)(i) of this section, known to be imported into the United States. All shipments imported into the United States under these HTS numbers must be accompanied by a FCO. The shipment may not be imported into the United States if harvested by a large-scale driftnet nation, unless accompanied by the official statement described in paragraph (f)(5)(x) of this section.

(A) *Frozen*:	
0303.41.0000	Albacore or longfinned tunas, frozen.
0303.43.0000	Skipjack, frozen.
0303.49.0020	Bluefin, frozen.
0303.49.0040	Other tuna, frozen.
(B) *Canned*:	

1604.14.2020	Albacore tuna, in airtight containers, not in oil, not over 7kg, in quota.
1604.14.3020	Albacore tuna, in airtight containers, not in oil, not in quota.

(iii) *Exports from driftnet nations only: HTS numbers requiring a Fisheries Certificate of Origin and official certification.* The following HTS numbers identify categories of fish and shellfish, other than those identified in paragraphs (f)(2)(i) and (f)(2)(ii) of this section, known to have been harvested using a large-scale driftnet and imported into the United States. Shipments exported from a large-scale driftnet nation and imported into the United States under any of the HTS numbers listed in paragraph (f)(2) of this section must be accompanied by an FCO and the official statement described in paragraph (f)(5)(x) of this section.

(A) *Frozen*:	
0303.10.0012	Salmon, chinook, frozen.
0303.10.0022	Salmon, chum, frozen.
0303.10.0032	Salmon, pink, frozen.
0303.10.0042	Salmon, sockeye, frozen.
0303.10.0052	Salmon, coho, frozen.
0303.10.0062	Salmon, Pacific, non-specific, frozen.
0303.21.0000	Trout, frozen.
0303.22.0000	Salmon, Atlantic and Danube, frozen.
0303.29.0000	Salmonidae, other, frozen.
0303.70.4097	Fish, other, frozen.
0303.75.0010	Dogfish, frozen.
0303.75.0090	Other sharks, frozen.
0303.79.2041	Swordfish steaks, frozen
0303.79.2049	Swordfish, other, frozen.
0304.20.2066	Fish, fillet, skinned, in blocks frozen over 4.5kg.
0304.20.6008	Salmonidae, salmon fillet, frozen.
0304.20.6096	Fish, fillet, frozen.
0307.49.0010	Squid, other, fillet, frozen.
(B) *Canned*:	
1604.11.2020	Salmon, pink, canned in oil, in airtight containers.
1604.11.2030	Salmon, sockeye, canned in oil, in airtight containers.
1604.11.2090	Salmon, other, canned in oil, in airtight containers.
1604.11.4010	Salmon, chum, canned, not in oil.
1604.11.4020	Salmon, pink, canned, not in oil.
1604.11.4030	Salmon, sockeye, canned, not in oil.
1604.11.4040	Salmon, other, canned, not in oil.
1604.11.4050	Salmon, other, canned, not in oil.
1604.19.2000	Fish, other, in airtight containers, not in oil.
1604.19.3000	Fish, other, in airtight containers, in oil.
1605.90.6055	Squid, loligo, prepared/preserved.
(C) *Other*.	
0304.10.4099	Other fish, fillets and other fish meat, fresh or chilled.
0304.20.2066	Other fish, fillets, skinned, in blocks weighing over 4.5kg, frozen.
0304.20.6098	Other fish, fillets, frozen.
0304.90.1089	Other fish, fillets and fish meat, in bulk or in immediate containers, fresh or chilled.
0304.90.9092	Other fish meat, fresh or chilled.
0305.30.6080	Fish, non-specific, fillet. dried/salted/brine.
0305.49.4040	Fish, non-specific, smoked.
0305.59.2000	Shark fins.
0305.59.4000	Fish, non-specific, dried.
0305.69.4000	Salmon, non-specific, salted.
0305.69.5000	Fish, non-specific, in immediate containers, salted, not over 6.8kg.
0305.69.6000	Fish, non-specific, salted, other.
0307.49.0050	Squid, non-specific, frozen/dried/salted/brine.
0307.49.0060	Squid, non-specific, & cuttle fish frozen/dried/salted/brine.

(3) *Imports requiring a Fisheries Certificate of Origin.* Shipments containing the following may not be imported into the United States unless a completed FCO is filed with the Customs Service at the time of importation:

(i) Tuna classified under an HTS number listed in paragraphs (f)(2)(i) or (f)(2)(ii) of this section, or

(ii) Fish classified under an HTS number listed in paragraph (f)(2) of this section that was harvested by a vessel of a large-scale driftnet nation, as identified under paragraph (f)(8) of this section.

(4) *Disposition of Fisheries Certificates of Origin.* The FCO form described in paragraph (f)(5) of this section may be obtained from the Administrator, Southwest Region, or downloaded from the Internet at http://swr.ucsd.edu/noaa370.htm. The FCO required under paragraph (f)(3) of this section must accompany the tuna or tuna products from entry into the United States, through final processing, and it must be endorsed at each change in ownership. FCOs that require multiple endorsements must be submitted to the Administrator, Southwest Region, by the last endorser when all required endorsements are completed. An invoice must accompany the shipment at the time of importation or, in the alternative, must be made available within 30 days of a request by the Secretary or the Administrator, Southwest Region, to produce the invoice.

(5) *Contents of Fisheries Certificate of Origin.* An FCO, certified to be accurate by the first exporter of the accompanying shipment, must include the following information:

(i) Customs entry identification;

(ii) Date of entry;

(iii) Exporter's full name and complete address;

(iv) Importer's or consignee's full name and complete address;

(v) Species description, product form, and HTS number;

(vi) Total net weight of the shipment in kilograms;

(vii) Ocean area where the fish were harvested (ETP, Western Pacific Ocean, South Pacific Ocean, Atlantic Ocean, Caribbean Sea, Indian Ocean, or other);

(viii) Type of fishing gear used to harvest the fish (purse seine, longline, baitboat, large-scale driftnet, gillnet, trawl, pole and line, or other);

(ix) Country under whose laws the harvesting vessel operated based upon the flag of the vessel or, if a certified charter vessel, the country that accepted responsibility for the vessel's fishing operations;

(x) Dates on which the fishing trip began and ended;

(xi) If the shipment includes tuna or products harvested with a purse seine net, the name of the harvesting vessel;

(xii) Dolphin safe condition of the shipment;

(xiv) For shipments harvested by vessels of a nation known to use large-scale driftnets, as determined by the Secretary pursuant to paragraph (f)(8) of this section, a statement must be included on the Fisheries Certificate of Origin that is dated and signed by a responsible government official of the harvesting nation, certifying that the fish or fish products were harvested by a method other than large-scale driftnet; and

(xii) If the shipment contains tuna harvested in the ETP by a purse seine vessel of more than 400 st (362.8 mt) carrying capacity, each importer or processor who takes custody of the shipment must sign and date the form to certify that the form and attached

documentation accurately describe the shipment of fish that they accompany.

(6) *Dolphin-safe label.* Tuna or tuna products sold in or exported from the United States that include on the label the term ''dolphin-safe'' or any other term or symbol that claims or suggests the tuna were harvested in a manner not injurious to dolphins are subject to the requirements of subpart H of this part.

(7) *Scope of embargoes*—(i) *ETP yellowfin tuna embargo.* Yellowfin tuna or yellowfin tuna products harvested using a purse seine in the ETP identified by an HTS number listed in paragraph (f)(2)(i) of this section may not be imported into the United States if such tuna or tuna products were:

(A) Harvested on or after March 3, 1999, the effective date of section 4 of the IDCPA, and harvested by, or exported from, a nation that the Assistant Administrator has determined has purse seine vessels of greater than 400 st (362.8 mt) carrying capacity harvesting tuna in the ETP, unless the Assistant Administrator has made an affirmative finding required for importation for that nation under paragraph (f)(9) of this section;

(B) Exported from an intermediary nation, as defined in section 3 of the MMPA, and a ban is currently in force prohibiting the importation from that nation under paragraph (f)(9)(viii) of this section; or

(C) Harvested before March 3, 1999, the effective date of section 4 of the IDCPA, and would have been banned from importation under section 101(a)(2) of the MMPA at the time of harvest.

(ii) *Driftnet embargo.* A shipment containing an item listed in paragraph (f)(2) of this section may not be imported into the United States if it:

(A) Was exported from or harvested on the high seas by any nation determined by the Assistant Administrator to be engaged in large-scale driftnet fishing, unless the FCO is accompanied by an original statement by a responsible government official of the harvesting nation, signed and dated by that official, certifying that the fish or fish products were harvested by a method other than large-scale driftnet; or

(B) Is identified on the FCO as having been harvested by a large-scale driftnet.

(8) *Large-scale driftnet nation: determination.* Based upon the best information available, the Assistant Administrator will determine which nations have registered vessels that engage in fishing using large-scale driftnets. Such determinations will be published in the **Federal Register**. A responsible government official of any such nation may certify to the Assistant Administrator that none of the nation's vessels use large-scale driftnets. Upon receipt of the certification, the Assistant Administrator may find, and publish such finding in the *Federal Register*, that none of that nation's vessels engage in fishing with large-scale driftnets.

(9) *Affirmative finding procedure for nations harvesting yellowfin tuna using a purse seine in the ETP.* (i) The Assistant Administrator will determine, on an annual basis, whether to make an affirmative finding based upon documentary evidence provided by the government of the exporting nation, by the government of the harvesting nation, if different, or by the IDCP and the IATTC, and will publish the finding in the **Federal Register**. A finding will remain valid for 1 year or for such other period as the Assistant Administrator may determine. An affirmative finding will be terminated if the Assistant Administrator determines that the requirements of this paragraph are no longer being met. Every 5 years, the government of the harvesting nation, must submit such documentary evidence directly to the Assistant Administrator and request an affirmative finding. Documentary evidence needs to be submitted by the harvesting nation for the first affirmative finding subsequent to the effective date of this rule. The Assistant Administrator may require the submission of supporting documentation or other verification of statements made in connection with requests to allow importations. An affirmative finding applies to tuna and tuna products that were harvested by vessels of the nation after February 15, 1999. To make an affirmative finding, the Assistant Administrator must find that:

(A) The harvesting nation participates in the IDCP and is either a member of the IATTC or has initiated (and within 6 months thereafter completed) all steps required of applicant nations, in accordance with article V, paragraph 3, of the Convention establishing the IATTC, to become a member of that organization;

(B) The nation is meeting its obligations under the IDCP and its obligations of membership in the IATTC, including all financial obligations;

(C)(*1*) The annual total dolphin mortality of the nation's purse seine fleet (including certified charter vessels operating under its jurisdiction) did not exceed the aggregated total of the mortality limits assigned by the IDCP for that nation's purse seine vessels for the year preceding the year in which the finding would start; or

(*2*)(*i*) Because of extraordinary circumstances beyond the control of the nation and the vessel captains, the total dolphin mortality of the nation's purse seine fleet (including certified charter vessels operating under its jurisdiction) exceeded the aggregated total of the mortality limits assigned by the IDCP for that nation's purse seine vessels; and

(*ii*) Immediately after the national authorities discovered the aggregate mortality of its fleet had been exceeded, the nation required all its vessels to cease fishing for tuna in association with dolphins for the remainder of the calendar year; and

(D)(*1*) For calendar year 2000 and any subsequent years in which the parties agree to a global allocation system for per-stock per-year individual stock quotas, the nation responded to the notification from the IATTC that an individual stock quota had been reached by prohibiting any additional sets on the stock for which the quota had been reached;

(*2*) If a per-stock per-year quota is allocated to each nation, the annual per-stock per-year dolphin mortality of the nation's purse seine fleet (including certified charter vessels operating under its jurisdiction) did not exceed the aggregated total of the per-stock per-year limits assigned by the IDCP for that nation's purse seine vessels (if any) for the year preceding the year in which the finding would start; or

(*3*)(*i*) Because of extraordinary circumstances beyond the control of the nation and the vessel captains, the per-stock per-year dolphin mortality of the nation's purse seine fleet (including certified charter vessels operating under its jurisdiction) exceeded the aggregated total of the per-stock per-year limits assigned by the IDCP for that nation's purse seine vessels; and

(*ii*) Immediately after the national authorities discovered the aggregate per-stock mortality limits of its fleet had been exceeded, the nation required all its vessels to cease fishing for tuna in association with the stocks whose limits had been exceeded, for the remainder of the calendar year.

(ii) *Documentary Evidence and Compliance with the IDCP.*—(A) *Documentary Evidence.* The Assistant Administrator will make an affirmative finding under paragraph (f)(9)(i) of this section only if the government of the harvesting nation provides directly to the Assistant Administrator, or authorizes the IATTC to release to the Assistant Administrator, complete, accurate, and timely information that enables the Assistant Administrator to determine whether the harvesting nation is meeting the obligations of the

IDCP, and whether ETP-harvested tuna imported from such nation comports with the tracking and verification regulations of subpart H of this part.

(B) *Revocation.* After considering the information provided under paragraph (f)(9)(ii)(A) of this section, each party's financial obligations to the IATTC, and any other relevant information, including information that a nation is consistently failing to take enforcement actions on violations which diminish the effectiveness of the IDCP, the Assistant Administrator, in consultation with the Secretary of State, will revoke an affirmative finding issued to a nation that is not meeting the obligations of the IDCP.

(iii) A harvesting nation may apply for an affirmative finding at any time by providing to the Assistant Administrator the information and authorizations required in paragraphs (f)(9)(i) and (f)(9)(ii) of this section, allowing at least 60 days from the submission of complete information to NMFS for processing.

(iv) The Assistant Administrator will make or renew an affirmative finding for the period from April 1 through March 31, or portion thereof, if the harvesting nation has provided all the information and authorizations required by paragraphs (f)(9)(i) and (f)(9)(ii) of this section, and has met the requirements of paragraphs (f)(9)(i) and (f)(9)(ii) of this section.

(v) *Reconsideration of finding.* The Assistant Administrator may reconsider a finding upon a request from, and the submission of additional information by, the harvesting nation, if the information indicates that the nation has met the requirements under paragraphs (f)(9)(i) and (f)(9)(ii) of this section.

(vi) *Intermediary nation.* Except as authorized under this paragraph, no tuna or tuna products classified under one of the HTS numbers listed in paragraph (f)(2)(i) of this section may be imported into the United States from any intermediary nation. An ''intermediary nation'' is a nation that exports yellowfin tuna or yellowfin tuna products to the United States and that imports yellowfin tuna or yellowfin tuna products that are subject to a direct ban on importation into the United States pursuant to section 101(a)(2)(B) of the MMPA, unless shown not to be yellowfin tuna or yellowfin tuna products harvested using purse seine in the ETP. The Assistant Administrator will publish in the **Federal Register** a notice announcing when NMFS has determined, based on the best information available, that a nation is an ''intermediary nation.'' After the effective date of that notice, these import restrictions shall apply. Shipments of yellowfin tuna or yellowfin tuna products shipped through a nation on a through bill of lading or in another manner that does not enter the shipments into that nation as an importation do not make that nation an intermediary nation.

(A) *Intermediary nation determination status.* Imports from an intermediary nation of tuna and tuna products classified under any of the HTS numbers in paragraph (f)(2)(i) of this section may be imported into the United States only if the Assistant Administrator determines and publishes in the **Federal Register** that the intermediary nation has provided certification and reasonable proof that it has not imported in the preceding 6 months yellowfin tuna or yellowfin tuna products that are subject to a ban on direct importation into the United States under section 101(a)(2)(B) of the MMPA. At that time, the nation shall no longer be considered an ''intermediary nation'' and these import restrictions shall no longer apply.

(B) *Changing the status of intermediary nation determinations.* The Assistant Administrator will review decisions under this paragraph upon the request of an intermediary nation. Such requests must be accompanied by specific and detailed supporting information or documentation indicating that a review or reconsideration is warranted. For purposes of this paragraph, the term ''certification and reasonable proof'' means the submission to the Assistant Administrator by a responsible government official from the nation of a document reflecting the nation's customs records for the preceding 6 months, together with a certification attesting that the document is accurate.

(vii) *Pelly certification.* After 6 months of an embargo being in place against a nation under this section, that fact will be certified to the President for purposes of certification under section 8(a) of the Fishermen's Protective Act of 1967 (22 U.S.C. 1978(a)) for as long as the embargo remains in effect.

(viii) *Coordination.* The Assistant Administrator will promptly advise the Department of State and the Department of the Treasury of embargo decisions, actions and finding determinations.

(10) *Fish refused entry.* If fish is denied entry under paragraph (f)(3) of this section, the District Director of Customs shall refuse to release the fish for entry into the United States and shall issue a notice of such refusal to the importer or consignee.

(11) *Disposition of fish refused entry into the United States; redelivered fish.* Fish which is denied entry under paragraph (f)(3) of this section and which is not exported under Customs supervision within 90 days from the date of notice of refusal of admission or date of redelivery shall be disposed of under Customs laws and regulations. Provided however, that any disposition shall not result in an introduction into the United States of fish caught in violation of the MMPA.

(12) *Market Prohibitions.* It is unlawful for any person to sell, purchase, offer for sale, transport, or ship in the United States, any tuna or tuna products unless the tuna products are either:

(i) Dolphin-safe under subpart H; or

(ii) harvested in compliance with the IDCP by vessels under the jurisdiction of a nation that is a member of the IATTC or has initiated, and within 6 months thereafter completes, all steps required by applicant nations to become members of the IATTC.

(iii) For purposes of this section, tuna or tuna products are ''dolphin-safe'' if they are dolphin-safe under subpart H.

(g) *Penalties.* Any person or vessel subject to the jurisdiction of the United States will be subject to the penalties provided for under the MMPA for the conduct of fishing operations in violation of these regulations.

6. In Subpart D, a new § 216.46 is added to read as follows:

§ 216.46 U.S. citizens on foreign flag vessels operating under the International Dolphin Conservation Program.

The MMPA's provisions do not apply to a citizen of the United States who incidentally takes any marine mammal during fishing operations in the ETP which are outside the U.S. exclusive economic zone (as defined in section 3 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1802)), while employed on a fishing vessel of a harvesting nation that is participating in, and in compliance with, the IDCP.

7. Sections 216.90 through 216.94 are revised to read as follows:

§ 216.90 Purposes.

This subpart governs the requirements for using the official mark, described in § 216.96, or an alternative mark that refers to dolphins, porpoises, or marine mammals, to label tuna or tuna products offered for sale in or exported from the United States using the term ''dolphin-safe'' or suggesting the tuna were harvested in a manner not injurious to dolphins.

§ 216.91 Dolphin-safe labeling standards.

(a) It is a violation of section 5 of the Federal Trade Commission Act (15 U.S.C. 45) for any producer, importer, exporter, distributor, or seller of any tuna products that are exported from or offered for sale in the United States to include on the label of those products the term ''dolphin-safe'' or any other term or symbol that claims or suggests that the tuna contained in the products were harvested using a method of fishing that is not harmful to dolphins if the products contain tuna harvested:

(1) *ETP large purse seine vessel.* In the ETP by a purse seine vessel of greater than 400 st (362.8 mt) carrying capacity unless:

(i) The documentation requirements for dolphin-safe tuna under §§ 216.92 and 216.94 are met;

(ii) No dolphin were killed or seriously injured during the sets in which the tuna were caught; or

(iii) If the Assistant Administrator publishes notification in the **Federal Register** announcing a finding that the intentional deployment of purse seine nets on or encirclement of dolphins is having a significant adverse impact on any depleted stock:

(A) No tuna products were caught on a trip using a purse seine net intentionally deployed on or to encircle dolphins; and

(B) No dolphins were killed or seriously injured during the sets in which the tuna were caught.

(2) *Non-ETP purse seine vessel.* Outside the ETP by a vessel using a purse seine net:

(i) In a fishery in which the Assistant Administrator has determined that a regular and significant association occurs between dolphins and tuna (similar to the association between dolphins and tuna in the ETP), unless such products are accompanied by a written statement, executed by the captain of the vessel and an observer participating in a national or international program acceptable to the Assistant Administrator, certifying that no purse seine net was intentionally deployed on or used to encircle dolphins during the particular voyage on which the tuna were caught and no dolphins were killed or seriously injured in the sets in which the tuna were caught; or

(ii) In any other fishery unless the products are accompanied by a written statement executed by the captain of the vessel certifying that no purse seine net was intentionally deployed on or used to encircle dolphins during the particular voyage on which the tuna was harvested;

(3) *Driftnet.* By a vessel engaged in large-scale driftnet fishing; or

(4) *Other fisheries.* By a vessel in a fishery other than one described in paragraphs (a)(1) through(a)(3) of this section that is identified by the Assistant Administrator as having a regular and significant mortality or serious injury of dolphins, unless such product is accompanied by a written statement, executed by the captain of the vessel and an observer participating in a national or international program acceptable to the Assistant Administrator, that no dolphins were killed or seriously injured in the sets or other gear deployments in which the tuna were caught, provided that the Assistant Administrator determines that such an observer statement is necessary.

(b) It is a violation of section 5 of the Federal Trade Commission Act (15 U.S.C. 45) to willingly and knowingly use a label referred to in this section in a campaign or effort to mislead or deceive consumers about the level of protection afforded dolphins under the IDCP.

(c) A tuna product that is labeled with the official mark, described in § 216.96, may not be labeled with any other label or mark that refers to dolphins, porpoises, or marine mammals.

§ 216.92 Dolphin-safe requirements for tuna harvested in the ETP by large purse seine vessels.

(a) *U.S. vessels.* Tuna products that contain tuna harvested by U.S. flag purse seine vessels of greater than 400 st (362.8 mt) carrying capacity in the ETP may be labeled ''dolphin-safe'' if the following requirements are met:

(1) ''Dolphin-safe'' Tuna Tracking Forms certified by the vessel captain and the observer are submitted to the Regional Administrator, Southwest Region, at the end of the fishing trip during which the tuna was harvested;

(2) The tuna has been processed by a U.S. tuna processor in a plant located in one of the 50 states, Puerto Rico, or American Samoa that is in compliance with the tuna tracking and verification requirements of § 216.94;

(3) The tuna or tuna products are accompanied by a properly completed FCO;

(4) The tuna or tuna products meet the dolphin-safe labeling standards under § 216.91; and

(5) The FCO is properly endorsed by each processor certifying that, to the best of his or her knowledge and belief, the FCO and attached documentation are complete and accurate.

(b) *Imported tuna.* Tuna or tuna products harvested in the ETP by purse seine vessels of greater than 400 st (362.8 mt) carrying capacity and presented for import into the United States are dolphin safe if:

(1) The tuna was harvested by a U.S. vessel fishing in compliance with the requirements of the IDCP and applicable U.S. law, or by a vessel belonging to a nation that has obtained an affirmative finding of § 216.24(f)(9);

(2) The tuna or tuna products are accompanied by a properly completed FCO;

(3) The tuna or tuna products are accompanied by valid documentation signed by a representative of the appropriate IDCP member nation, certifying that:

(i) There was an IDCP approved observer on board the vessel(s) during the entire trip(s); and

(ii) The tuna contained in the shipment were caught according to the dolphin-safe labeling standards of § 216.91;

(4) The documentation provided in paragraph(b)(3) of this section includes a listing of vessel names and identifying numbers of the associated Tuna Tracking Forms for each trip of which tuna in the shipment originates; and

(5) The FCO is properly endorsed by each exporter, importer, and processor certifying that, to the best of his or her knowledge and belief, the FCO and attached documentation are complete and accurate.

§ 216.93 Submission of documentation.

(a) Requirements for the submission of documents concerning the activities of U.S. flag vessels with greater than 400 st carrying capacity fishing in the ETP are contained in § 216.94.

(b) The import documents required by §§ 216.91 and 216.92 must accompany the tuna product whenever it is offered for sale or export, except that these documents need not accompany the product when offered for sale if:

(1) The documents do not require further endorsement by any importer or processor and are submitted to officials of the U.S. Customs Service at the time of import; or

(2) the documents are endorsed as required by § 216.92(b)(4) and the final processor delivers the endorsed documents to the Administrator, Southwest Region, or to U.S. Customs as required.

§ 216.94 Tracking and verification program.

The Administrator, Southwest Region, has established a national tracking and verification program to accurately document the ''dolphin-safe'' condition of tuna, under the standards set forth in § 216.91(a). The tracking program

includes procedures and reports for use when importing tuna into the U.S. and during U.S. purse seine fishing, processing, and marketing in the U.S. and abroad. Verification of tracking system operations is attained through the establishment of audit and document review requirements. The tracking program is consistent with the international tuna tracking and verification program adopted by the Parties to the IDCP.

(a) *Tuna tracking forms.* Whenever a U.S. flag tuna purse seine vessel of greater than 400 st (362.8 mt) carrying capacity fishes in the ETP, IDCP approved Tuna Tracking Forms (TTFs), bearing the IATTC cruise number assigned to that trip, are used by the observer to record every set made during that trip. One TTF is used to record ''dolphin-safe'' sets and a second TTF is used to record ''non-dolphin-safe'' sets. The information entered on the TTFs following each set includes date of trip, set number, date of loading, name of the vessel, vessel Captain's name, observer's name, well number, weights by species composition, estimated tons loaded, and date of the set. The observer and the vessel engineer initial the entry for each set, and the vessel Captain and observer review and sign both TTFs at the end of the fishing trip certifying that the information on the form is accurate. The captain's and observer's certification of the TTF on which dolphin-safe sets are recorded complies with 16 U.S.C. 1385(h).

(b) *Tracking fishing operations.* (1) During ETP fishing trips by purse seine vessels, tuna caught in sets designated as ''dolphin-safe'' by the vessel observer must be stored separately from tuna caught in ''non-dolphin-safe'' sets from the time of capture through unloading, except as provided in paragraph (b)(2) of this section. Vessel personnel will decide into which wells tuna will be loaded. The observer will initially designate whether each set is ''dolphin-safe'' or not, based on his/her observation of the set. The observer will initially identify a vessel fish well as ''dolphin-safe'' if the first tuna loaded into the well during a trip was captured in a set in which no dolphin died or was seriously injured. The observer will initially identify a vessel fish well as ''non-dolphin-safe'' if the first tuna loaded into the well during a trip was captured in a set in which a dolphin died or was seriously injured. Any tuna loaded into a well previously designated ''non-dolphin-safe'' or ''mixed well'' is considered ''non-dolphin-safe'' tuna. Except as provided for in paragraph (b)(2)(i) of this section, the observer will change the designation of a ''dolphin-safe'' well to ''non-dolphin-safe'' if any tuna are loaded into the well that were captured in a set in which a dolphin died or was seriously injured.

(2) *Mixed wells.* Only two acceptable conditions exist under which a ''mixed'' well can be created.

(i) In the event that a set has been designated ''dolphin-safe'' by the observer, but during the loading process dolphin mortality or serious injury is identified, the ''dolphin-safe'' designation of the set will change to ''non-dolphin-safe.'' If one or more of the wells into which the newly designated ''non-dolphin-safe'' tuna are loaded already contains ''dolphin-safe'' tuna loaded during a previous set, the observer will note in his or her trip records the well numbers and the estimated weight of such ''non-dolphin-safe'' tuna and designate such well(s) as ''mixed well(s).'' Once a well has been identified as ''non-dolphin-safe'' or ''mixed'' all tuna subsequently loaded into that well will be designated as ''non-dolphin-safe.'' When the contents of such a ''mixed well'' are received by a processor, the tuna will be weighed and separated according to the observer's report of the estimated weight of ''dolphin-safe'' and ''non-dolphin-safe'' tuna contained in that well. In addition, 15 percent of the ''dolphin-safe'' tuna unloaded from the ''mixed well'' will be designated as ''non-dolphin-safe.''

(ii) Near the end of an ETP fishing trip, if the only well space available is in a ''non-dolphin-safe'' well, and there is an opportunity to make one last set, ''dolphin-safe'' tuna caught in that set may be loaded into the ''non-dolphin-safe'' well. The ''dolphin-safe'' tuna must be kept physically separate from the ''non-dolphin-safe'' tuna already in the well, using netting or other material.

(3) The captain, managing owner, or vessel agent of a U.S. purse seine vessel returning to port from a trip, any part of which included fishing in the ETP, must provide at least 48 hours notice of the vessel's intended place of landing, arrival time, and schedule of unloading to the Administrator, Southwest Region.

(4) If the trip terminates when the vessel enters port to unload part or all of its catch, new TTFs will be assigned to the new trip, and any information concerning tuna retained on the vessel will be recorded as the first entry on the TTFs for the new trip. If the trip is not terminated following a partial unloading, the vessel will retain the original TTFs and submit a copy of those TTFs to the Administrator, Southwest Region, within 5 working days. In either case, the species and amount unloaded will be noted on the respective originals.

(5) Tuna offloaded to trucks, storage facilities or carrier vessels must be loaded or stored in such a way as to maintain and safeguard the identification of the ''dolphin-safe'' or ''non-dolphin-safe'' designation of the tuna as it left the fishing vessel.

(6)(i) When ETP caught tuna is to be offloaded from a U.S. purse seiner directly to a U.S. canner within the 50 states, Puerto Rico, or American Samoa, or in any port and subsequently loaded aboard a carrier vessel for transport to a U.S. processing location, a NMFS representative may meet the U.S. purse seiner to receive the TTFs from the vessel observer and to monitor the handling of ''dolphin-safe'' and ''non-dolphin-safe'' tuna.

(ii) When ETP caught tuna is offloaded from an U.S. purse seiner in any port and subsequently loaded aboard a carrier vessel for transport to a cannery outside the jurisdiction of the United States, a NMFS representative may meet the vessel to receive copies of the TTFs from the observer and monitor the offloading. The U.S. caught tuna becomes the tracking and verification responsibility of the foreign buyer when it is offloaded from the U.S. vessel.

(iii) If a NMFS representative does not meet the vessel in port at the time of arrival, the observer may take the signed TTFs to the IATTC office and mail copies to the Administrator, Southwest Region, from that location within 5 working days of the end of the trip.

(iv) When ETP caught tuna is offloaded from a U.S. purse seiner directly to a processing facility located outside the jurisdiction of the United States in a country that is a party to the IDCP, the national authority in whose area of jurisdiction the tuna is to be processed will assume the responsibility for tracking and verification of the tuna offloaded. A representative of the national authority will receive copies of the TTFs from the observer, and copies of the TTFs will be forwarded to the Administrator, Southwest Region.

(c) *Tracking cannery operations.* (1) Whenever a tuna canning company in the 50 states, Puerto Rico, or American Samoa is scheduled to receive a domestic or imported shipment of ETP caught tuna for processing, the company must provide at least 48 hours notice of the location and arrival date and time of such a shipment, to the Administrator, Southwest Region, so that a NMFS representative can be present to monitor delivery and verify that ''dolphin-safe'' and ''non-dolphin-safe'' tuna are clearly identified and remain segregated.

(2) At the close of delivery activities, which may include weighing, boxing or containerizing, and transfer to cold storage or processing, the company must provide a copy of the processor's receiving report to the NMFS representative, if present. If a NMFS representative is not present, the company must submit a copy of the processor's receiving report to the Administrator, Southwest Region, electronically, by mail, or by fax within 5 working days. The processor's receiving report must contain, at a minimum: date of delivery, catcher vessel name and flag, trip number and dates, storage container number(s), ''dolphin-safe'' or ''non-dolphin-safe'' designation of each container, species, product description, and weight of tuna in each container.

(3) Tuna canning companies will report on a monthly basis the amounts of ETP-caught tuna that are removed from cold storage. This report may be submitted in conjunction with the monthly report required in paragraph (c)(5) of this section. This report must contain:

(i) The date of removal;

(ii) Storage container number(s) and ''dolphin-safe'' or ''non-dolphin-safe'' designation of each container; and

(iii) Details of the disposition of fish (for example, canning, sale, rejection, etc.).

(4) During canning activities, ''non-dolphin-safe'' tuna may not be mixed in any manner or at any time in its processing with any ''dolphin-safe'' tuna or tuna products and may not share the same storage containers, cookers, conveyers, tables, or other canning and labeling machinery.

(5) Canned tuna processors must submit a report to the Administrator, Southwest Region, of all tuna received at their processing facilities in each calendar month whether or not the tuna is actually canned or stored during that month. Monthly cannery receipt reports must be submitted electronically or by mail before the last day of the month following the month being reported. Monthly reports must contain the following information:

(i) *Domestic receipts*: species, condition (round, loin, dressed, gilled and gutted, other), weight in short tons to the fourth decimal, ocean area of capture (eastern tropical Pacific, western Pacific, Indian, eastern and western Atlantic, other), catcher vessel, trip dates, carrier name, unloading dates, and location of unloading.

(ii) *Import receipts*: In addition to the information required in paragraph (c)(5)(i) of this section, a copy of the FCO for each imported receipt must be provided.

(d) *Tracking imports*. All tuna products, except fresh tuna, that are imported into the United States must be accompanied by a properly certified FCO as required by § 216.24(f).

(e) *Verification requirements*.—(1) *Record maintenance*. Any exporter, transshipper, importer, or processor of any tuna or tuna products containing tuna harvested in the ETP must maintain records related to that tuna for at least 3 years. These records include, but are not limited to: FCO and required certifications, any report required in paragraph (a) and (b) of this section, invoices, other import documents, and trip reports.

(2) *Record submission*. Within 30 days of receiving a written request from the Administrator, Southwest Region, any exporter, transshipper, importer, or processor of any tuna or tuna products containing tuna harvested in the ETP must submit to the Administrator any record required to be maintained under paragraph (e)(1) of this section.

(3) *Audits and spot-checks*. Upon request of the Administrator, Southwest Region, any such exporter, transshipper, importer, or processor must provide the Administrator, Southwest Region, timely access to all pertinent records and facilities to allow for audits and spot-checks on caught, landed, and processed tuna.

(f) *Confidentiality of proprietary information*. Information submitted to the Assistant Administrator under this section will be treated as confidential in accordance with NOAA Administrative Order 216–100 ''Protection of Confidential Fisheries Statistics.''

8. In subpart H, § 216.96 is added and reserved to read as follows:

§ 216.96 Official mark [Reserved]

[FR Doc. 99–33632 Filed 12–30–99; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[I.D. 111099A]

Fraser River Sockeye and Pink Salmon Fisheries; Inseason Orders

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

ACTION: Inseason orders.

SUMMARY: NMFS publishes the Fraser River salmon inseason orders regulating fisheries in U.S. waters. The orders were issued by the Fraser River Panel (Panel) of the Pacific Salmon Commission (Commission) and subsequently approved and issued by NMFS during the 1999 sockeye and pink salmon fisheries within the Fraser River Panel Area (U.S.). These orders established fishing times, areas, and types of gear for U.S. treaty Indian and all-citizen fisheries during the period the Commission exercised jurisdiction over these fisheries. Due to the frequency with which inseason orders are issued, publication of individual orders is impracticable. The 1999 orders are therefore being published in this document to avoid fragmentation.

DATES: Each of the following inseason orders was effective upon announcement on telephone hotline numbers as specified at 50 CFR 300.97(b)(1). Comments will be accepted through January 18, 2000.

ADDRESSES: Comments may be mailed to William Stelle, Jr., Regional Administrator, Northwest Region, NMFS, 7600 Sand Point Way NE., BIN C15700–Bldg. 1, Seattle, WA 98115–0070. Information relevant to this document is available for public review during business hours at the Office of the Regional Administrator, Northwest Region, NMFS.

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

SUPPLEMENTARY INFORMATION: The Treaty between the Government of the United States of America and the Government of Canada Concerning Pacific Salmon was signed at Ottawa on January 28, 1985, and subsequently was given effect in the United States by the Pacific Salmon Treaty Act (Act) at 16 U.S.C. 3631-3644.

Under authority of the Act, Federal regulations at 50 CFR part 300 subpart F provide a framework for implementation of certain regulations of the Commission and inseason orders of the Commission's Panel for sockeye and pink salmon fisheries in the Fraser River Panel Area (U.S.). These regulations apply to fisheries for sockeye and pink salmon in the Fraser River Panel Area (U.S.) during the period each year when the Commission exercises jurisdiction over these fisheries.

The regulations close the Fraser River Panel Area (U.S.) to sockeye and pink salmon fishing unless opened by Panel regulations or by inseason orders of NMFS that give effect to Panel orders. During the fishing season, NMFS may issue orders that establish fishing times and areas consistent with the annual

Commission regime and inseason orders of the Panel. Such orders must be consistent with domestic legal obligations. The Regional Administrator, Northwest Region, NMFS, issues the inseason orders. Official notice of these inseason actions of NMFS is provided by two telephone hotline numbers described at 50 CFR 300.97(b)(1). Inseason orders must be published in the *Federal Register* as soon as practicable after they are issued. Due to the frequency with which inseason orders are issued, publication of individual orders is impractical. The 1999 orders are therefore being published in this document to avoid fragmentation.

The following inseason orders were adopted by the Panel and issued for U.S. fisheries by NMFS during the 1999 fishing season. The times listed are local times, and the areas designated are Puget Sound Management and Catch Reporting Areas as defined in the Washington State Administrative Code at Chapter 220-22.

Order No. 1999-1: Issued 5:00 p.m., July 23, 1999

Treaty Indian Fishery

Areas 4B, 5 and 6C: Open for drift gillnets from 12:00 noon July 25 to 12:00 noon July 28.

Order No. 1999-2: Issued 11:00 a.m. July 28, 1999

Treaty Indian Fishery

Areas 4B, 5, and 6C: Open for drift gillnets from 12:00 noon July 28 to 12:00 noon July 31.

Order No. 1999-3: Issued 5:00 p.m., July 30, 1999

Treaty Indian Fishery

Areas 4B, 5, and 6C: Drift gillnet open from 12:00 noon August 1 to 12:00 noon August 3.

Order No. 1999-4: Issued 9:00 a.m. August 3, 1999

Treaty Indian Fishery

Areas 4B, 5, and 6C: Open for drift gillnets from 12:00 noon August 3 to 12:00 noon August 7.

Order No. 1999-5: Issued 5:00 p.m., August 6, 1999

Treaty Indian Fishery

Areas 4B, 5 and 6C: Closed for drift gillnets from 6:00 p.m. August 6 to 12:00 noon August 7.

Order No. 1999-6: Issued at 5:00 p.m., September 10, 1999.

United States Fraser River Panel Area Waters

Areas 4B, 5 and 6C, relinquish regulatory control effective September 12.

Classification

This action is authorized by 50 CFR 300.97, and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 3636(b).

Dated: December 27, 1999.

George H. Darcy,

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

[FR Doc. 99–34033 Filed 12–30–99; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 991223349–9349–01; I.D. 122199A]

Fisheries of the Exclusive Economic Zone Off Alaska; Bering Sea and Aleutian Islands Area; Interim 2000 Harvest Specifications for Groundfish

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

ACTION: Interim 2000 harvest specifications for groundfish; associated management measures.

SUMMARY: NMFS issues interim 2000 total allowable catch (TAC) amounts for each category of groundfish, Community Development Quota (CDQ) amounts, and prohibited species catch (PSC) amounts for the groundfish fishery of the Bering Sea and Aleutian Islands management area (BSAI). Without interim specifications in effect on January 1, the groundfish fisheries would not be able to open on that date, which would result in unnecessary closures and disruption within the fishing industry. This action is necessary to conserve and manage the groundfish resources of the BSAI and is intended to implement the goals and objectives of the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP).

EFFECTIVE DATE: Effective 0001 hours, Alaska local time (A.l.t.), January 1, 2000, until the effective date of the final 2000 harvest specifications for BSAI groundfish, which will be published in the **Federal Register**.

ADDRESSES: Copies of the Environmental Assessment (EA) prepared for this action and the Preliminary 2000 Stock Assessment and Fishery Evaluation (SAFE) report, dated September 1999, is available from the North Pacific Fishery Management Council, West 4th Avenue, Suite 306, Anchorage, AK 99510–2252 (907–271–2809).

FOR FURTHER INFORMATION CONTACT: Shane Capron, 907–586–7228.

SUPPLEMENTARY INFORMATION:

Background

Federal regulations at 50 CFR part 679 implement the FMP and govern the groundfish resources of the BSAI. The North Pacific Fishery Management Council (Council) prepared the FMP, and NMFS approved it, under the Magnuson-Stevens Fishery Conservation and Management Act. General regulations that also pertain to the U.S. fisheries appear at subpart H of 50 CFR part 600.

The Council met in October 1999 to review scientific information concerning groundfish stocks. The Council adopted for public review the preliminary SAFE Report for the 2000 BSAI groundfish fisheries. The preliminary SAFE Report, dated September 1999, provides an update on the status of stocks. Copies of the SAFE Report are available from the Council (see **ADDRESSEES**). The Council recommended a proposed total acceptable biological catch (ABC) of 2,247,846 mt and a proposed total TAC of 2 million metric tons (mt) for the 2000 fishing year. The proposed TAC amounts for each species were based on the best available biological and socioeconomic information.

In accordance with § 679.20(c)(1), NMFS published in the **Federal Register** proposed harvest specifications and associated management measures for groundfish in the BSAI for the 2000 fishing year (64 FR 69464 December 13, 1999). That document contains a detailed discussion of the proposed 2000 TACs, initial TACs (ITACs) and related apportionments, ABC amounts, overfishing levels, PSC amounts, and associated management measures of the BSAI groundfish fishery.

This action provides interim harvest specifications and apportionments thereof for the 2000 fishing year that will become available on January 1, 2000, and remain in effect until superseded by the final 2000 harvest

specifications. Background information concerning the 2000 groundfish harvest specification process upon which this interim action is based is provided in the above mentioned proposed specification document.

NMFS intends to initiate rulemaking that would affect the pollock fisheries. That rulemaking will include: (1) An FMP amendment to implement the American Fisheries Act as contained within the Omnibus Appropriations Bill for FY 99; Pub. L. No. 105–277 (AFA), and (2) A regulatory amendment to implement reasonable and prudent alternatives to avoid jeopardizing the continued existence of the endangered western population of Steller sea lions or adversely modifying its critical habitat. Because each of these rulemakings would affect the allocation and apportionment of the pollock TAC, these interim specifications provide pollock TAC amounts under the general allocative scheme as defined by the AFA itself, but do not specify apportionments of that interim TAC. Apportionments will be addressed in each of these rulemakings individually and in the final 2000 specifications and will be effective prior to the start of the pollock fishery which is scheduled to open on January 20, 2000.

Establishment of Interim TACs

Regulations at § 679.20(b)(1)(i) require that 15 percent of the TAC for each target species or species group, except for the hook-and-line and pot gear allocation of sablefish, be placed in a non-specified reserve. The AFA supersedes this provision for pollock by requiring that the TAC for this species be fully allocated among the CDQ program, incidental catch allowance, and inshore, catcher/processor, and mothership directed fishery allowances.

Regulations at § 679.20(b)(1)(iii) require that one-half of each TAC amount placed in the non-specified reserve be allocated to the groundfish CDQ reserve and that 20 percent of the hook-and-line and pot gear allocation of sablefish be allocated to the fixed gear sablefish CDQ reserve. Section 206(a) of the AFA requires that 10 percent of the pollock TAC be allocated to the pollock CDQ reserve. With the exception of the hook-and-line and pot gear sablefish CDQ reserve, the CDQ reserves are not further apportioned by gear. Regulations at § 679.21(e)(1)(i) also require that 7.5 percent of each PSC limit, with the exception of herring, be withheld as a PSQ reserve for the CDQ fisheries. Regulations governing the management of the CDQ and PSQ reserves are set forth at §§ 679.30 and 679.31.

Regulations at § 679.20(c)(2) provide that interim specifications become effective at 0001 hours, A.l.t., January 1, and remain in effect until superseded by the final groundfish harvest specifications. The regulations further provide that the interim specifications will be established as one-fourth of each proposed ITAC amount and apportionment thereof (not including the first seasonal allowance of pollock and Atka mackerel), one-fourth of each prohibited species catch (PSC) allowance established under § 679.21, and the first seasonal allowance of pollock and Atka mackerel TAC. As stated in the proposed specifications publication (64 FR 69464 December 13, 1999), no harvest of groundfish was authorized prior to the effective date of this action implementing the interim specifications.

Apportionment of Pollock TAC to Vessels Using Nonpelagic Trawl Gear

Regulations at § 679.20(a)(5)(i)(B) authorize NMFS, in consultation with the Council, to limit the amount of pollock that may be taken in the directed fishery for pollock using nonpelagic trawl gear. At its June 1998 meeting, the Council adopted management measures that, if approved by NMFS, would prohibit the use of nonpelagic trawl gear in the directed fishery for pollock and reduce specified prohibited species bycatch limits by amounts equal to anticipated savings in bycatch or bycatch mortality that would be expected from this prohibition. If NMFS approves these measures, a rule to implement them could be effective by mid-2000. NMFS, therefore, proposed to allocate 0 mt of the BSAI pollock TAC to the directed fishery for pollock with nonpelagic trawl gear, in order to reduce unnecessary bycatch in the 2000 pollock fishery and to carry out the Council's intent for this fishery. As a result of this proposed specification, 0 mt of BSAI pollock are available to the directed fishery for pollock with nonpelagic trawl gear on an interim basis.

Interim 2000 BSAI Groundfish Harvest Specifications

Table 1 provides interim TAC and CDQ amounts and apportionments thereof. Regulations at § 679.20(c)(2)(ii) do not provide for an interim specification for the non-trawl sablefish CDQ reserve or for sablefish managed under the Individual Fishing Quota program. As a result, fishing for the non-trawl allocation of CDQ sablefish and sablefish harvested with fixed gear is prohibited until the effective date of the final 2000 groundfish specifications.

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TABLE 1. INTERIM 2000 TAC AMOUNTS FOR GROUNDFISH AND APPORTIONMENTS THEREOF FOR THE BERING SEA AND ALEUTIAN ISLANDS MANAGEMENT AREA[1]

Species & Component (if applicable)		Area &/or Gear (if applicable)	Interim TAC	Interim CDQ
Pollock [2]	Inshore	BS	169,632	
	Offshore	BS	135,705	
	Mothership	BS	33,926	
	CDQ	BS	.....	39,680
	ICA	BS	44,640	
	ICA	AI	2,000	
	ICA	BogDist	1,000	
Total Pollock			392,260	39,680
Pacific Cod [3]		Jig	752	
		H/L & Pot	19,182	
		Trawl C/Vs	8,839	
		Trawl C/Ps	8,839	
		.....	.....	3,319
Total Pacific cod			37,612	3,319
Sablefish [4 5]		BS-Trawl	142	13
		BS-H/L & Pot	N/A	N/A
		AI-Trawl	73	6
		AI-H/L & Pot	N/A	N/A
Total Sablefish			215	19
Atka mackerel [6]		Western AI	11,475	506
		Central AI	9,520	420
		Eastern AI/BS	14,450	319
		Jig gear	144	
		Other gear	14,306	
Total Atka mackerel			35,445	1,245
Yellowfin sole		BSAI	44,196	3,900
Rock sole		BSAI	25,500	2,250
Greenland turbot		BS	1,282	169
		AI	631	113
Total Greenland turbot			1,913	282
Arrowtooth flounder		BSAI	28,550	2,519
Flathead sole		BSAI	16,426	1,449
Other flatfish [7]		BSAI	32,725	2,888
Pacific ocean perch		BS	298	26
		Western AI	1,322	253
		Central AI	818	117
		Eastern AI	729	72
Total Pacific ocean perch			3,167	468
Other red rockfish [8]		BS	57	5
Sharpchin/Northern		AI	899	79
Shortraker/Rougheye		AI	205	18
Other rockfish [9]		BS	79	7
		AI	146	13
Total other rockfish			225	20
Squid		BSAI	419	37
Other Species [10]		BSAI	6,983	616
Total interim TAC			635,888	58,791

[1] Amounts are in metric tons. These amounts apply to the entire Bering Sea (BS) and Aleutian Islands (AI) area unless otherwise specified. With the exception of pollock, and for purposes of these specifications, the BS includes the Bogoslof District (BogDist).

[2] For the 2000 pollock fishery, all pollock amounts and apportionments thereof will remain reserved until those measures under the AFA and required by the Biological Opinion for Steller sea lions to avoid jeopardy and adverse modification to critical habitat can be implemented. These rules will be effective before January 20, 2000 and apportionments of pollock will be addressed in each of these rules in the final 2000 specifications. The first seasonal apportionment of pollock for all sectors is 40 percent of the annual TAC allocated to that sector as required by the revised final reasonable and prudent alternatives. Ten percent of the pollock TAC is allocated to the pollock CDQ fishery under paragraph 206(a) of the AFA. The pollock ITAC is equal to the TAC minus the CDQ allocation. Under authority of the AFA, NMFS is allocating 5 percent of the pollock ITAC as an incidental catch allowance (see section 206(b) of the AFA). NMFS, under regulations at § 679.20(a)(5)(i)(B), allocates zero mt of pollock to nonpelagic trawl gear. This action is based on Council intent to prohibit the use of nonpelagic trawl gear in 2000 because of concerns of unnecessary incidental catch with bottom trawl gear in the pollock fishery.

[3] After subtraction of the reserves, the ITAC amount for Pacific cod is allocated 2 percent to vessels using jig gear, 51 percent to H/L gear, and 47 percent to Trawl. The Pacific cod allocation to trawl gear is split evenly between catcher vessels and catcher/processor vessels (See § 679.20(a)(7)(i)). Pacific cod ITAC seasonal apportionments to vessels using H/L or pot gear are not reflected in the interim TAC amounts. One-fourth of the ITAC gear apportionments are in effect on January 1 as an interim TAC.

[4] Sablefish gear allocations are as follows: In the BS subarea, Trawl gear is allocated 50 percent and H/L and pot gear is allocated 50 percent of the TAC. In the AI subarea, Trawl gear is allocated 25 percent, and H/L and pot gear is allocated 75 percent of the TAC (See § 679.20(a)(4)(iii) and (iv)). Fifteen percent of the sablefish Trawl gear allocation is placed in the nonspecific reserve. One-fourth of the ITAC amount for Trawl gear is in effect January 1 as an interim TAC amount.

[5] The sablefish H/L gear fishery is managed under the Individual Fishing Quota (IFQ) program and subject to regulations contained in subpart D of 50 CFR part 679. Twenty percent of the sablefish H/L and pot gear final TAC amount will be reserved for use by CDQ participants. (See § 679.31(c).) Existing regulations at § 679.20(c)(2)(ii) do not provide for an interim specification for the CDQ nontrawl sablefish reserve or for an interim specification for sablefish managed under the IFQ program. In addition, in accordance with § 679.7(f)(3), retention of sablefish caught with fixed gear is prohibited unless the harvest is authorized under a valid IFQ permit and IFQ card. In 2000, IFQ permits and IFQ cards will not be valid prior to the effective date of the 2000 final specifications. Thus, fishing for sablefish with fixed gear is not authorized under these interim specifications. See subpart D of 50 CFR part 679 and § 679.23(g) for guidance on the annual allocation of IFQ and the sablefish fishing season.

[6] Regulations at § 679.20 (a)(8) require that up to 2 percent of the Eastern AI area ITAC be allocated to the jig gear fleet. The amount of this allocation is 1 percent and was determined by the Council based on anticipated harvest capacity of the Jig gear fleet. The jig gear allocation is not apportioned by season.

[7] "Other flatfish" includes all flatfish species except for Pacific halibut (a prohibited species), flathead sole, Greenland turbot, rock sole, arrowtooth flounder and yellowfin sole.

[8] "Other red rockfish" includes shortraker, rougheye, sharpchin, and northern rockfish in the BS subarea.

[9] "Other rockfish" includes all Sebastes and Sebastolobus species except for Pacific ocean perch, sharpchin, northern, shortraker, and rougheye rockfish.

[10] "Other species" includes sculpins, sharks, skates, and octopus.

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Interim Allocation of PSC Limits for Crab, Halibut, and Herring

Under § 679.21(e), annual PSC limits are specified for red king crab, *Chionoecetes bairdi* Tanner crab, and *C. opilio* crab in applicable Bycatch Limitation Zones (see § 679.2) of the Bering Sea subarea, and for Pacific halibut and Pacific herring throughout the BSAI. Regulations under § 679.21(e) authorize the apportionment of each PSC limit into PSC allowances for specified fishery categories. Under § 679.21(e)(1)(i), 7.5 percent of each PSC limit specified for halibut, crab, and salmon is reserved as a PSQ reserve for use by the groundfish CDQ program.

Regulations at § 679.20(c)(2)(ii) provide that one-fourth of each proposed PSC and PSQ allowance be made available on an interim basis for harvest at the beginning of the fishing year, until superseded by the final harvest specifications. The fishery specific interim PSC allowances for halibut and crab are specified in Table 2 and are in effect at 0001 hours, A.l.t., January 1, 2000.

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TABLE 2. INTERIM 2000 PROHIBITED SPECIES BYCATCH ALLOWANCES FOR THE BSAI TRAWL AND NON-TRAWL FISHERIES.

	Prohibited Species and Zone					
TRAWL FISHERIES	Halibut mortality (mt) BSAI	Herring (mt) BSAI	Red King Crab (animals) Zone 1[1]	C. opilio (animals) COBLZ[2]	C. bairdi (animals) Zone 1[1]	C. bairdi (animals) Zone 2[1]
Yellowfin sole	239	64	4,950	777,197	65,224	282,206
Rocksole/oth.flat/flat sole[3]	189	6	25,988	191,638	69,882	94,069
RKC savings subarea[3]	.....	.....	11,138	.....	.....	.....
Turbot/sablefish/arrowtooth[4]	.....	3	.....	10,646	.....	.....
Rockfish July 4 - December 31[5]	18	2	.....	10,646	.....	1,845
Pacific cod	368	6	3,713	31,940	34,988	51,382
Midwater trawl pollock	.....	304	.....	.....	.....	.....
Pollock/Atka/other[5]	60	38	463	18,559	3,345	4,787
TOTAL TRAWL PSC	873	421	46,250	1,040,625	173,438	434,28
NON-TRAWL FISHERIES						
Pacific cod - Total	187					
Other non-trawl - Total	21					
Groundfish pot & jig	exempt					
Sablefish hook-&-line	exempt					
TOTAL NON-TRAWL PSC	208					
PSQ RESERVE[7]	88	.....	3,750	84,375	14,063	35,213
GRAND TOTAL	1,169	421	50,000	1,125,000	187,500	469,500

[1] Refer to § 679.2 for definitions of areas.

[2] C. opilio Bycatch L imitation Zone. Boundaries are defined at § 679.21 (e)(7)(iv)(B).

[3] The Council at its October 1999 meeting proposed limiting red king crab for trawl fisheries within the RKCSS to 30 percent of the total allocation to the rock sole, flathead sole, and other flatfish fishery category (§ 679.21(e)(3)(ii)(B)).

[4] Greenland turbot, arrowtooth flounder, and sablefish fishery category.

[5] The Council at its October 1999 meeting proposed limiting red king crab for trawl fisheries within the RKCSS to 30 percent of the total allocation to the rock sole, flathead sole, and other flatfish fishery category (§ 679.21(e)(3)(ii)(B)).

[6] Pollock other than pelagic trawl pollock, Atka mackerel, and "other species" fishery category.

[7] With the exception of herring, 7.5 percent of each PSC limit is allocated to the multi-species CDQ program as PSQ reserve. The PSQ reserve is not allocated by fishery, gear or season.

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Prior to the beginning of the 2000 fishing year, NMFS will implement fishery closures based on these interim specifications if the Regional Administrator, Alaska Region, NMFS, determines that interim TAC amounts are required as incidental catch to support other anticipated groundfish fisheries or if the PSC allowance for a fishery has been reached. NMFS may implement other closures at the time the final 2000 harvest specifications are implemented or during the 2000 fishing year, as necessary for effective management.

Classification

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

NMFS has prepared an EA for this action which describes the impact on the human environment that would result from implementation of the interim specifications. In December 1998, NMFS issued a Supplemental Environmental Impact Statement (SEIS) on the groundfish TAC specifications and PSC limits under the BSAI and Gulf of Alaska (GOA) groundfish FMPs. In July 1999, the District Court for the Western District of Washington held that the 1998 SEIS did not adequately address aspects of the BSAI and GOA FMPs. Notwithstanding the deficiencies the court noted in the 1998 SEIS, NMFS believes that the discussion of impacts and alternatives in the 1998 SEIS is directly applicable to this interim action and the EA for the interim 2000 harvest specifications, which ''tiers off'' (incorporates by reference) the 1998 SEIS.

Pursuant to section 7 of the Endangered Species Act (ESA), NMFS has completed a consultation on the effects of the 1999 to 2002 pollock and Atka mackerel fisheries on listed species, including the Steller sea lion, and designated critical habitat. The Biological Opinion prepared for this consultation, dated December 3, 1998, concluded that the Atka mackerel fisheries in the BSAI are not likely to jeopardize the continued existence of Steller sea lions or adversely modify their designated critical habitat. However, the Biological Opinion concluded that the pollock fisheries in the BSAI and the GOA would cause jeopardy and adverse modification.

NMFS is developing a proposed rule to implement permanent reasonable and prudent alternatives (RPAs) to avoid the likelihood that the pollock fisheries off Alaska will jeopardize the continued existence of the western population of Steller sea lions or adversely modify its critical habitat. Emergency measures which implemented RPAs for 1999, are in effect until December 31, 1999 (July 21, 1999, 64 FR 39087). Regulations implementing permanent RPAs must be effective prior to the start of the BSAI and GOA pollock fisheries which are scheduled to open on January 20, 2000, or NMFS will be obligated under the ESA to close all fishing for pollock until such measures can be implemented.

NMFS has also completed consultations on the effects of the 2000 BSAI groundfish fisheries on listed species, including the Steller sea lion and salmon, and on designated critical habitat. These consultations were completed December 23, 1999 and December 22, 1999 respectively.

A biological opinion on the BSAI hook-and-line groundfish fishery and the BSAI trawl groundfish fishery for the ESA listed short-tailed albatross was issued by the United States Fish and Wildlife Service in March 1999. The conclusion continued the no jeopardy determination and the incidental take statement expressing the requirement to immediately reinitiate consultations if incidental takes exceed four short-tailed albatross over two years' time (1999–2000).

In order for the BSAI groundfish fishing season to begin on January 1 (see § 679.23), § 679.20(c)(2) requires NMFS to establish interim harvest specifications to be effective on January 1 and to remain in effect until superseded by the filing of final harvest specifications with the Office of the Federal Register. Without interim specifications in effect on January 1, the groundfish fisheries would not be able to open on that date, which would result in unnecessary closures and disruption within the fishing industry. NMFS anticipates that the interim specifications will be in effect for only a short period of time before they are superseded by the final specifications. The proposed specifications were published as a proposed rule in the **Federal Register** on December 13, 1999 (64 FR 69464). Regulations at § 679.20(c)(2)(ii) require that the interim TACs be established at specified fractional amounts of the proposed harvest specifications. Accordingly, the opportunity for public comment on the proposed specifications provides opportunity for comment on these interim specifications. The Assistant Administrator for Fisheries, NOAA (AA), finds for good cause under 5 U.S.C. 553(b)(B) that the need to establish interim TAC limitations and other restrictions on fisheries in the BSAI, effective on January 1, 2000, makes it impracticable and contrary to the public interest to provide prior notice and opportunity for public comment on this rule. Likewise, the AA finds for good cause under 5 U.S.C. 553(d)(3) that the need to establish interim TAC levels and other management measures in the BSAI, effective on January 1, 2000, makes it impractical and contrary to the public interest to delay the effective date of the limits and measures for 30 days.

Because these interim specifications are not required to be issued with prior notice and opportunity for public comment, the analytical requirements of the Regulatory Flexibility Act do not apply. Consequently, no regulatory flexibility analysis has been prepared.

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

Dated: December 27, 1999.

Penelope D. Dalton,

Assistant Administrator for Fisheries, National Marine Fisherie's Service.

[FR Doc. 99–34030 Filed 12–28–99; 4:25 pm]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 991223348–9348–01; I.D. 122199B]

Fisheries of the Exclusive Economic Zone Off Alaska; Gulf of Alaska; Interim 2000 Harvest Specifications

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

ACTION: Interim 2000 harvest specifications for groundfish and associated management measures.

SUMMARY: NMFS issues interim 2000 total allowable catch (TAC) amounts for each category of groundfish and specifications for prohibited species bycatch allowances for the groundfish fishery of the Gulf of Alaska (GOA). Without interim specifications in effect on January 1, the groundfish fisheries would not be able to open on that date, which would result in unnecessary closures and disruption within the fishing industry. This action is necessary to conserve and manage the groundfish resources of the GOA, and is intended to implement the goals and objectives of the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP).

DATES: Effective 0001 hrs, Alaska local time (A.l.t.), January 1, 2000, until the effective date of the final 2000 harvest

specifications for GOA groundfish, which will be published in the **Federal Register**.

ADDRESSES: Copies of the Environmental Assessment (EA) prepared for this action and the Preliminary 2000 Stock Assessment and Fishery Evaluation (SAFE) Report, dated September 1999, are available from the North Pacific Fishery Management Council, 605 West 4th Avenue, Suite 306, Anchorage, AK 99501–2252, (907–586–7237).

FOR FURTHER INFORMATION CONTACT: Thomas Pearson, 907–481–1780 or tom.pearson@noaa.gov.

SUPPLEMENTARY INFORMATION:

Background

Federal regulations at 50 CFR part 679 implement the FMP and govern the groundfish fisheries in the GOA. The North Pacific Fishery Management Council (Council) prepared the FMP, and NMFS approved it under the authority of the Magnuson-Stevens Fishery Conservation and Management Act. General regulations that also pertain to the U.S. fisheries appear at 50 CFR part 600.

The Council met October 12 to 18, 1999, to review scientific information concerning groundfish stocks. At that meeting the Council adopted the preliminary SAFE Report for the 2000 GOA groundfish fisheries. The preliminary SAFE Report, dated September 1999, provides an update on the status of stocks. Copies of the preliminary SAFE Report are available for public review from the Council (see **ADDRESSES**). The Council recommended a proposed total TAC of 306,535 metric tons (mt) and a proposed total acceptable biological catch (ABC) of 532,590 mt for the 2000 fishing year. The proposed TAC amounts for each species are based on the best available biological and socio-economic information.

In accordance with § 679.20(c)(1), NMFS published in the **Federal Register** proposed harvest specifications and associated management measures for groundfish in the GOA for the 2000 fishing year (December 13, 1999, 64 FR 69457). That document discusses in detail the 2000 specification process, as well as 2000 proposed specifications, reserves, apportionments for groundfish, and prohibited species catch (PSC) limits.

This action provides interim harvest specifications and apportionments thereof of GOA groundfish for the 2000 fishing year that will become available on January 1, 2000, and remain in effect until superseded by the final 2000 harvest specifications.

Establishment of Interim TACs

Regulations at § 679.20(c)(2) require that one-fourth of each proposed TAC and apportionment thereof (not including the reserves and the first seasonal allowance of pollock), one-fourth of the proposed halibut PSC amounts, and the proposed first seasonal allowance of pollock become available for harvest at 0001 hours, A.l.t., January 1, on an interim basis and remain in effect until superseded by the final harvest specifications.

Regulations at § 679.20(a)(6)(ii) and (iii) allocate 100 percent of the pollock TAC to vessels catching pollock for processing by the inshore component, 90 percent of the Pacific cod TAC to vessels catching Pacific cod for processing by the inshore component, and 10 percent to vessels catching Pacific cod for processing by the offshore component.

Regulations at § 679.20(b)(2) establish reserves for the GOA at 20 percent of the TAC amounts for pollock, Pacific cod, flatfish species, and the ''other species'' category. The GOA groundfish TAC amounts have been utilized fully since 1987. NMFS expects this trend to continue in 2000, and, with the exception of Pacific cod, has proposed reapportioning all the reserves to TAC. With the exception of Pacific cod, the interim TAC amounts contained in Table 1 reflect the reapportionment of reserves back to the TAC.

Interim 2000 GOA Groundfish Harvest Specifications and Apportionments

Table 1 provides interim TAC amounts, interim TAC allocations of Pacific cod to the inshore and offshore components, and interim sablefish TAC apportionments to hook-and-line and trawl gear. These interim TAC amounts and apportionments become effective at 0001 hours, A.l.t., January 1, 2000.

Under separate rulemaking, NMFS will establish apportionments of pollock TAC among the Western and Central Regulatory Areas of the GOA in order to permanently implement reasonable and prudent alternatives (RPAs) to avoid the likelihood that the pollock fisheries off Alaska will jeopardize the continued existence of the western population of Steller sea lions or adversely modify its critical habitat. Final regulations implementing the RPAs must be effective before the start of the GOA pollock fisheries on January 20, 2000, or NMFS will be obligated under the Endangered Species Act (ESA) to close all fishing for pollock until such measures can be implemented.

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Table 1--Interim 2000 TAC Amounts of Groundfish for the Combined Western/Central (W/C), Western (W), Central (C), and Eastern (E) Regulatory Areas and in the West Yakutat (WYK), Southeast Outside (SEO), and Gulfwide (GW) Districts of the Gulf of Alaska (GOA)[1,2]. Interim Sablefish TAC Apportionments to Hook-and-Line (H/L) and Trawl (TRW) Gear.

Species	Area	Interim TAC
		(mt)
Pollock[3,4]		
Subtotal	W/C	23,120
	WYK (640)	528
	SEO (650)	1,582
Total		25,230
Pacific cod[5]		
Inshore	W	4,253
Offshore	W	473
Inshore	C	7,728
Offshore	C	859
Inshore	E	229
Offshore	E	25
Total		13,567
Flatfish, Deep-water[6]		
	W	60
	C	685
	WYK	430
	SEO	337
Total		1,512
Rex sole		
	W	298
	C	1,373
	WYK	212
	SEO	405
Total		2,288
Flathead sole		
	W	500
	C	1,250
	WYK	318
	SEO	192
Total		2,260

Table 1--Interim 1999 TAC Amounts of Groundfish for the Combined Western/Central (W/C), Western (W), Central (C), and Eastern (E) Regulatory Areas and in the West Yakutat (WYK), Southeast Outside (SEO), and Gulfwide (GW) Districts of the Gulf of Alaska (GOA)[1,2]. Interim Sablefish TAC Apportionments to Hook-and-Line (H/L) and Trawl (TRW) Gear.--Continued

Species	Area	Interim TAC
		(mt)
Flatfish, Shallow-water[7]		
	W	1,125
	C	3,237
	WYK	62
	SEO	268
Total		4,692
Arrowtooth flounder		
	W	1,250
	C	6,250
	WYK	625
	SEO	625
Total		8,750
Sablefish[8,9,10]		
H/L	W	N/A(364)
TRW	W	91
H/L	C	N/A(1,118)
TRW	C	280
TRW	E	66
H/L	WYK	N/A(456)
H/L	SEO	N/A(800)
Total		3,175
Pacific ocean perch[11]		
	W	462
	C	1,690
	WYK	205
	SEO	790
Total		3,147
Shortraker/rougheye[12]		
	W	40
	C	242
	E	115
Total		397

Table 1--Interim 1999 TAC Amounts of Groundfish for the Combined Western/Central (W/C), Western (W), Central (C), and Eastern (E) Regulatory Areas and in the West Yakutat (WYak), Southeast Outside (SEO), and Gulfwide (GW) Districts of the Gulf of Alaska (GOA)[1,2]. Interim Sablefish TAC Apportionments to Hook-and-Line (H/L) and Trawl (TRW) Gear.--Continued

Species	Area	Interim TAC
		(mt)
Rockfish, northern[13]		
	W	210
	C	1,037
	E	N/A
Total		1,247
Rockfish, other[14,15, 17]		
	W	5
	C	162
	WYK	117
	SEO	1,033
Total		1,317
Rockfish, pelagic shelf[16]		
	W	132
	C	843
	WYK	185
	SEO	60
Total		1,220
Rockfish, demersal shelf SEO[17]		
	SEO	140
Thornyhead rockfish		
	W	65
	C	175
	E	257
Total		497
Atka mackerel		
	GW	150
Other species[18]		3,650
GOA Total Interim TAC		73,239

(Interim TAC amounts have been rounded to nearest mt)

[1] Reserves have been reapportioned back to each species TAC and are reflected in the interim TAC amounts except for Pacific cod. (See § 679.20(a)(2))

[2] See § 679.2 for definitions of regulatory area and statistical area. See Figure 3b to part 679 for a description of regulatory districts.

[3] NMFS is not apportioning pollock in the Central and Western Regulatory areas until permanent RPAs can be implemented that would avoid the likelihood that the pollock fisheries off Alaska will jeopardize the continued existence of the western population of Steller sea lions or adversely modify it critical habitat. In the Eastern Regulatory Area, pollock is not divided into less than annual allowances, and one-fourth of the TAC is available on an interim basis.

[4] The pollock TAC in all regulatory areas will be allocated 100 percent to vessels catching groundfish for processing by the inshore component after subtraction of amounts that are determined by the Regional Administrator, NMFS, to be necessary to support the bycatch needs of the offshore component in directed fisheries for other groundfish species. At this time, these bycatch amounts are unknown and will be determined during the fishing year. (See § 679.20(a)(6)(ii))

[5] The Pacific cod TAC in all regulatory areas is allocated 90 percent to vessels catching groundfish for processing by the inshore component and 10 percent to vessels catching groundfish for processing by the offshore component. (See § 679.20(a)(6)(iii))

[6] "Deep-water flatfish" means Dover sole, Greenland turbot and deepsea sole.

[7] "Shallow-water flatfish" means flatfish not including "deep-water flatfish", flathead sole, rex sole, or arrowtooth flounder.

[8] Sablefish TAC amounts for each of the regulatory areas and districts are assigned to hook-and-line and trawl gear. In the Central and Western Regulatory Areas, 80 percent of the TAC is allocated to hook-and-line gear and 20 percent to trawl gear. In the Eastern Regulatory Area, 95 percent of the TAC is assigned to hook-and-line gear, and 5 percent is allocated to trawl gear and may only be used as bycatch to support directed fisheries for other target species. (See § 679.20(a)(4))

[9] The sablefish hook-and-line (H/L) gear fishery is managed under the Individual Fishing Quota (IFQ) program and is subject to regulations contained in subpart D of 50 CFR part 679. Annual IFQ amounts are based on the final TAC amount specified for the sablefish H/L gear fishery as contained in the final specifications for groundfish. Under § 679.7(f)(3)(ii), retention of sablefish caught with H/L gear is prohibited unless the harvest is authorized under a valid IFQ permit and IFQ card. In 2000, IFQ permits and IFQ cards will not be valid before the effective date of the 2000 final specifications. Thus, fishing for sablefish with H/L gear will not be authorized under these interim specifications. Nonetheless, interim amounts are shown in parentheses to reflect assignments of one-fourth of the proposed TAC amounts among gear categories and regulatory areas in accordance with § 679.20(c)(2)(i). See § 679.40 for guidance on the annual allocation of IFQ.

[10] Sablefish caught in the GOA with gear other than hook-and-line or trawl gear must be treated as prohibited species and may not be retained.

[11] "Pacific ocean perch" means Sebastes alutus.

[12] "Shortraker/rougheye rockfish" means Sebastes borealis (shortraker) and S. aleutianus (rougheye).

[13] "Northern rockfish" means Sebastes polyspinis.

[14] "Other rockfish" in the Western and Central Regulatory Areas and in the West Yakutat District means slope rockfish and demersal shelf rockfish. The category "other rockfish" in the Southeast Outside District means slope rockfish.

[15] "Slope rockfish" means Sebastes aurora (aurora), S. melanostomus (blackgill), S. paucispinis (bocaccio), S. goodei (chilipepper), S. crameri (darkblotch), S. elongatus (greenstriped), S. variegatus (harlequin), S. wilsoni (pygmy), S. proriger (redstripe), S. zacentrus (sharpchin), S. jordani (shortbelly), S. brevispinis (silvergrey), S. diploproa (splitnose), S. saxicola (stripetail), S. miniatus (vermilion), S. babcocki (redbanded), and S. reedi (yellowmouth). In the Eastern GOA only, "slope rockfish" also includes northern rockfish, S. polyspinous.

[16] "Pelagic shelf rockfish" means Sebastes ciliatus (dusky), S. entomelas (widow), and S. flavidus (yellowtail).

[17] "Demersal shelf rockfish" means Sebastes pinniger (canary), S. nebulosus (china), S. caurinus (copper), S. maliger (quillback), S. helvomaculatus (rosethorn), S. nigrocinctus (tiger), and S. ruberrimus (yelloweye).

[18] "Other species" means sculpins, sharks, skates, squid, and octopus. The TAC for "other species" equals 5 percent of the TAC amounts of target species.

BILLING CODE 3510–22–C

Interim Halibut PSC Limits

Under § 679.21(d), annual Pacific halibut PSC limits are established for trawl and hook-and-line gear and may be established for pot gear. The Council proposed to reestablish the 1999 halibut limits for 2000 because no new information was available. Consistent with 1999, the Council recommended exemptions for pot gear, jig gear, and the sablefish hook-and-line fishery from halibut PSC limits for 2000. The interim PSC limits are effective on January 1, 2000, and remain in effect until superseded by the final 2000 harvest specifications. The interim halibut PSC limits are: (1) 500 mt to trawl gear, (2) 72.5 mt to hook-and-line gear for fisheries other than sablefish and demersal shelf rockfish, and (3) 2.5 mt to hook-and-line gear for the demersal shelf rockfish fishery in the Southeast Outside District.

Regulations at § 679.21(d)(3)(iii) authorize apportionments of the trawl halibut PSC limit allowance as bycatch allowances to a deep-water species complex, comprised of rex sole, sablefish, rockfish, deep-water flatfish, and arrowtooth flounder, and a shallow-water species complex, comprised of pollock, Pacific cod, shallow-water flatfish, flathead sole, Atka mackerel, and ''other species.'' The interim 2000 apportionment for the shallow-water species complex is 417 mt and for the deep-water species complex is 83 mt.

NMFS will implement fishery closures for those fisheries where insufficient TAC exists to support a directed fishery. The closures will be implemented for the beginning of the 2000 fishing year.

Classification

This action is authorized under 50 CFR 679.20 and is exempt from review under Executive Order 12866.

NMFS has prepared an EA for this action, which describes the impact on the human environment that would result from implementation of the interim specifications. In December 1998 NMFS issued a Supplemental Environmental Impact Statement (SEIS) for the groundfish TAC specifications and PSC limits under the Bering Sea and Aleutian Islands (BSAI) and GOA groundfish FMPs. In July 1999, the District Court for the Western District of Washington held that the 1998 SEIS did not adequately address aspects of the BSAI and GOA FMPs. Notwithstanding the deficiencies the court noted in the 1998 SEIS, NMFS believes that the discussion of impacts and alternatives in the 1998 SEIS is directly applicable to this interim action and the draft EA for the interim 2000 harvest specifications, which ''tiers off'' (incorporates by reference) the 1998 SEIS.

Pursuant to section 7 of the ESA, NMFS completed a consultation on the effects of the 1999 to 2002 pollock and Atka mackerel fisheries on listed species, including the Steller sea lion and designated critical habitat. The Biological Opinion prepared for this consultation, dated December 3, 1998, concluded that the Atka mackerel fisheries in the BSAI are not likely to jeopardize the continued existence of Steller sea lions or adversely modify their designated critical habitat. However, the Biological Opinion concluded that the pollock fisheries in the BSAI and the GOA would cause jeopardy and adverse modification.

NMFS has identified measures that would avoid the likelihood that the pollock fisheries off Alaska will jeopardize the continued existence of the western population of Steller sea lions or adversely modify its critical habitat and is developing a proposed rule to permanently implement those measures. Emergency measures, which implemented RPAs for 1999, are in effect until December 31, 1999 (July 21, 1999, 64 FR 39087). Regulations implementing the permanent RPAs must be effective prior to the start of the BSAI and GOA pollock fisheries on January 20, 2000, or NMFS will be obligated under the ESA to close all fishing for pollock until such measures can be implemented.

NMFS also completed consultations on the effects of the 2000 BSAI groundfish fisheries on listed species, including the Steller sea lion and salmon, and on designated critical habitat. These consultations were completed December 23, 1999 and December 22, 1999 respectively.

A Biological Opinion on the BSAI hook-and-line groundfish fishery and the BSAI trawl groundfish fishery for the ESA-listed short-tailed albatross was issued by the United States Fish and Wildlife Service in March 1999. The conclusion continued the no jeopardy determination and the incidental take statement expressing the requirement to immediately reinitiate consultations if incidental takes exceed four short-tailed albatross over a 2-year period (1999–2000).

In order for the GOA groundfish fishing season to begin on January 1 (see § 679.23), § 679.20(c)(2) requires NMFS to establish interim harvest specifications to be effective on January 1 and to remain in effect until superseded by the filing of final harvest specifications with the Office of the **Federal Register**. Without interim specifications in effect on January 1, the groundfish fishery would not be able to open on that date, which would result in unnecessary closures and disruption within the fishing industry and would run counter to investment-backed expectations. NMFS anticipates that the interim specifications will be in effect for only a short period of time before they are superseded by the final specifications. The proposed specifications were published as a proposed rule in the **Federal Register** on December 13, 1999 (64 FR 69457). Regulations at § 679.20(c)(2)(i) require that the interim TACs and apportionments thereof be established at specified fractional amounts of the proposed specifications and apportionments thereof. Accordingly, the opportunity for public comment on the proposed specifications provides opportunity for public comment on the interim specifications. The Assistant Administrator for Fisheries, NOAA (AA), finds for good cause under 5 U.S.C. 553(b)(B) that the need to establish interim TAC limitations and related management measures for fisheries in the GOA, effective on January 1, 2000, makes it impracticable and contrary to the public interest to provide prior notice and opportunity for public comment on this rule. For these same reasons, the AA finds for good cause under 5 U.S.C. 553(d)(3) that the need to establish interim TAC limitations and related management measures effective on January 1, 2000, makes it impractical and contrary to the public interest to delay their effective date for 30 days.

Because these interim specifications are not required to be issued with prior notice and opportunity for public comment, the analytical requirements of the Regulatory Flexibility Act do not apply. Consequently, NMFS has not prepared a regulatory flexibility analysis.

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

Dated: December 27, 1999.

Penelope D. Dalton,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 99–34029 Filed 12–28–99; 4:25 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 991223348–9348–01; I.D. 122399A]

Fisheries of the Exclusive Economic Zone Off Alaska; Closures of Specified Groundfish Fisheries in the Gulf of Alaska

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

ACTION: Closures.

SUMMARY: NMFS is closing specified groundfish fisheries in the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the directed fishing allowances specified for the 2000 interim total allowable catch (TAC) amounts for the GOA.

DATES: Effective 0001 hrs, Alaska local time (A.l.t.), January 1, 2000, until superseded by the effective date of the final 2000 harvest specifications for GOA groundfish, which will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Thomas Pearson, 907-481–1780 or tom.pearson@noaa.gov.

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.

In accordance with § 679.20(d), if the Administrator, Alaska Region, NMFS (Regional Administrator), determines that the amount of a target species or ''other species'' category apportioned to a fishery will be reached, the Regional Administrator may establish a directed fishing allowance for that species or species group. If the Regional Administrator establishes a directed fishing allowance, and that allowance is or will be reached before the end of the fishing year, NMFS will prohibit directed fishing for that species or species group in the specified GOA Regulatory Area or district (§ 697.20(d)(1)(iii)).

The interim 2000 harvest specifications for the groundfish fisheries in the GOA are published elsewhere in this issue of the **Federal Register**. The Regional Administrator has determined that the following interim TAC amounts will be reached and are necessary as incidental catch to support other directed groundfish fisheries before final specifications for groundfish are likely to be in effect for the 2000 fishing year:

Pollock	entire GOA
Thornyhead rockfish	entire GOA
Atka mackerel	entire GOA
Sablefish	entire GOA
Shortraker/rougheye rockfish	entire GOA
Deep-water flatfish	Western Regulatory Area
Northern rockfish	Eastern Regulatory Area
''Other rockfish''	Western and Central Regulatory Area

Consequently, in accordance with § 679.20(d)(1)(i), the Regional Administrator establishes the interim TAC amounts for the species listed above as directed fishing allowances.

Further, The Regional Administrator finds that these directed fishing allowances will be reached before the end of the year. Therefore, in accordance with § 679.20(d) NMFS is prohibiting directed fishing for these species in the specified areas. These closures will be in effect beginning at 0001 hours, A.l.t., January 1, 2000, until superseded by the effective date of Final 2000 Harvest Specifications for GOA Groundfish or, with respect to pollock, until a final rule implementing the recommended preferred alternatives to protect Steller sea lions is effective.

While these closures are in effect, the maximum retainable bycatch amounts at § 679.20(e) and (f) apply at any time during a fishing trip. Additional closures and restrictions may be found in existing regulations at 50 CFR part 679. These closures to directed fishing are in addition to closures and prohibitions found in regulations at 50 CFR part 679. Refer to § 679.2 for definitions of areas. The definitions of GOA deep-water flatfish and ''other rockfish'' species categories are provided in the Interim 2000 Harvest Specifications, as published in this issue of the **Federal Register**.

NMFS may implement other closures under the interim specifications, at the time the final 2000 harvest specifications for GOA groundfish are implemented or during the 2000 fishing year, as necessary for effective conservation and management.

Classification

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

This action responds to the interim TAC limitations and other restrictions on the fisheries established in the interim 2000 harvest specifications for GOA groundfish. It must be implemented immediately to prevent overharvesting the 2000 interim TAC of several groundfish species in the GOA. A delay in the effective date is impracticable and contrary to the public interest. The fleet will begin to harvest groundfish on January 1, 2000. Further delay would only result in overharvest. NMFS finds for good cause that the implementation of this action should not be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

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

Dated: December 27, 1999.

George H. Darcy,

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

[FR Doc. 99–34027 Filed 12–29–99; 10:54 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 991223349–9349–01; I.D. 122099A]

Fisheries of the Exclusive Economic Zone Off Alaska; Closures of Specified Groundfish Fisheries in the Bering Sea and Aleutian Islands

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

ACTION: Closure.

SUMMARY: NMFS is closing specified groundfish fisheries in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the prohibited species bycatch allowances and directed fishing allowances specified for the 2000 interim total allowable catch (TAC) amounts.

DATES: Effective 0001 hrs, Alaska local time (A.l.t.), January 1, 2000, until superseded by the notice of Final 2000 Harvest Specification for Groundfish, which will be published in the **Federal Register**.

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

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. 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.

In accordance with § 679.20(d), if the Administrator, Alaska Region, NMFS (Regional Administrator) determines that the amount of a target species or ''other species'' category apportioned to a fishery will be reached, the Regional Administrator may establish a directed fishing allowance for that species or species group. NMFS will prohibit directed fishing for a species or species group in the specified subarea or district (§ 697.20(d)(1)(iii)) if the Regional Administrator establishes a directed fishing allowance for that species or species group, and that allowance is or will be reached before the end of the fishing year. Similarly, under § 679.21(e), if the Regional Administrator determines that a fishery category's bycatch allowance of halibut, red king crab, or *C. bairdi* Tanner crab for a specified area has been reached, the Regional Administrator will prohibit directed fishing for each species in that category in the specified area.

Interim 2000 harvest specifications for the groundfish fisheries in the BSAI will be published in the **Federal Register** on or around the publication date of this closure. The Regional Administrator has determined that the interim TAC amounts of the following species will be reached and will be necessary as incidental catch to support other anticipated groundfish fisheries prior to the time that final specifications for groundfish are likely to be in effect for the 2000 fishing year. Consequently, in accordance with § 679.20(d)(1)(i), the Regional Administrator establishes the interim TAC amounts for the species listed below as directed fishing allowances.

Pollock—Bogoslof District
Pollock—Bering Sea subarea
Pacific ocean perch—Bering Sea subarea
''Other rockfish''—Bering Sea subarea
''Other red rockfish''—Bering Sea subarea
Pollock—Aleutian Islands subarea
Sharpchin/northern rockfish—Aleutian Islands subarea
Shortraker/rougheye rockfish—Aleutian Islands subarea
''Other rockfish''—Aleutian Islands subarea

Further, the Regional Administrator finds that these directed fishing allowances will be reached before the end of the year. Therefore, in accordance with § 679.20(d) NMFS is prohibiting directed fishing for these species in the specified areas. In addition, the interim BSAI halibut bycatch allowance specified for the trawl rockfish fishery and the trawl Greenland turbot/arrowtooth flounder/sablefish fishery categories, defined at § 679.21(e)(3)(iv)(C) and (D), is 0 mt. In accordance with § 679.21(e)(7)(v), therefore, NMFS is prohibiting directed fishing for the following species:

Rockfish by vessels using trawl gear—BSAI
Greenland turbot/arrowtooth flounder/sablefish by vessels using trawl gear—BSAI

These closures will be in effect beginning at 0001 hours, A.l.t., January 1, 2000, until superseded by the notice of Final 2000 Initial Harvest Specifications for Groundfish.

While these closures are in effect, the maximum retainable bycatch amounts at § 679.20(e) and (f) apply at any time during a fishing trip. These closures to directed fishing are in addition to closures and prohibitions found in regulations at 50 CFR part 679. Refer to § 679.2 for definitions of areas. In the BSAI, ''Other rockfish'' includes Sebastes and Sebastolobus species except for Pacific ocean perch and the ''other red rockfish'' species. ''Other red rockfish'' includes shortraker, rougheye, sharpchin, and northern rockfish.

NMFS may implement other closures under the interim specifications, at the time the notice of Final 2000 Initial Harvest Specifications are implemented, during the 2000 fishing year, or as necessary for effective conservation and management.

Classification

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

This action responds to the interim TAC limitations and other restrictions on the fisheries established in the Interim 2000 Harvest Specifications for groundfish for the BSAI. It must be implemented immediately to prevent overharvesting the 2000 interim TAC of several groundfish species in the BSAI. A delay in the effective date is impracticable and contrary to the public interest. The fleet will begin to harvest groundfish on January 1, 2000. Further delay would only result in overharvest. NMFS finds for good cause that the implementation of this action should not be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

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

Dated: December 27, 1999.

George H. Darcy,

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

[FR Doc. 99–34028 Filed 12–29–99; 10:54 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 65, No. 1
Monday, January 3, 2000

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

Grain Inspection, Packers and Stockyards Administration

7 CFR Part 800

RIN 0580–AA69

Fees for Official Inspection and Weighing Services

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Grain Inspection, Packers and Stockyards Administration (GIPSA) is proposing an approximate 2.4 percent increase for all hourly rates, certain unit rates, and the administrative tonnage fee. These fees apply to official inspection and weighing services performed in the United States under the United States Grain Standards Act (USGSA), as amended. These increases are needed to cover increased operational costs resulting from the approximate 4.8 percent mandated January 2000 Federal pay increase.

DATES: Written comments must be submitted on or before March 3, 2000.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Written comments must be submitted to Sharon Vassiliades, GIPSA, USDA, 1400 Independence Avenue, SW, Room 0623–S, Washington, DC 20250–3649, or faxed to (202) 720–4628. Comments may also be sent by electronic mail or Internet to: comments@gipsadc.usda.gov. All comments should make reference to the date and page number of this issue of the **Federal Register** and will be available for public inspection in the above office during regular business hours (7 CFR 1.27 (b)).

FOR FURTHER INFORMATION CONTACT: David Orr, Director, Field Management Division, at his Email address: Dorr@gipsadc.usda.gov or telephone him at (202) 720–0228.

SUPPLEMENTARY INFORMATION:

Executive Order 12866, Regulatory Flexibility Act, and the Paperwork Reduction Act

This rule has been determined to be nonsignificant for the purpose of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

Also, pursuant to the requirements set forth in the Regulatory Flexibility Act, James R. Baker, Administrator, GIPSA, has determined that this proposed rule will not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

GIPSA regularly reviews its user-fee financed programs to determine if the fees are adequate. GIPSA has and will continue to seek out cost saving opportunities and implement appropriate changes to reduce costs. Such actions can provide alternatives to fee increases. However, even with these efforts, GIPSA's existing fee schedule will not generate sufficient revenues to cover program costs while maintaining an adequate reserve balance. In fiscal year 1998, GIPSA's operating costs were $23,021,166 with revenue of $21,776,323, resulting in a loss of $1,244,843 and a reserve balance of $55,862. In fiscal year 1999, GIPSA's operating costs were $22,883,063 with revenue of $22,971,204 that resulted in a positive margin of $88,141. Even with the positive margin for FY 1999, the reserve balance is still well below the desired 3-month operating reserve.

Employee salaries and benefits are major program costs that account for approximately 84 percent of GIPSA's total operating budget. A general and locality salary increase that averages 4.8 percent for GIPSA employees, effective January 2000, will increase program costs. This salary adjustment will increase GIPSA's costs by approximately $691,613.

We have reviewed the financial position of our inspection and weighing program based on the increased salary and benefit costs along with the projected fiscal year 2000 workload. Based on that review, we have concluded that nearly half of the projected $691,613 salary increase can be absorbed through existing program efficiencies. Therefore, the other half needs to be covered through an increase in fees that will collect an estimated $390,000 in additional revenues.

The proposed fee increase primarily applies to entities engaged in the export of grain. Under the provisions of the USGSA, grain exported from the United States must be officially inspected and weighed. Mandatory inspection and weighing services are provided by GIPSA on a fee basis at 37 export facilities. All of these facilities are owned and managed by multi-national corporations, large cooperatives, or public entities that do not meet the criteria for small entities established by the Small Business Administration.

Some entities who request non-mandatory official inspection and weighing services at other than export locations could be considered small entities. The impact on these small businesses is similar to any other business; that is, an average 2.4 percent increase in the cost of official inspection and weighing services. This nominal increase should not significantly affect any business requesting official inspection and weighing services. Furthermore, any business that wishes to avoid the fee increase may elect to do so by using an alternative source for inspection and weighing services. Such a decision should not prevent the business from marketing its products.

There would be no additional reporting or recordkeeping requirements imposed by this action. In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection and recordkeeping requirements in Part 800 have been previously approved by the Office of Management and Budget under control number 0580–0013. GIPSA has not identified any other Federal rules which may duplicate, overlap, or conflict with this proposed rule.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have a retroactive effect. The USGSA provides in § 87g that no subdivision may require or impose any requirements or restrictions concerning the inspection, weighing, or description of grain under the Act. Otherwise, this proposed rule will not preempt any State or local laws, regulations, or policies unless they present irreconcilable conflict with this proposed rule. There are no administrative procedures that must be

exhausted prior to any judicial challenge to the provisions of this proposed rule.

Proposed Action

The USGSA (7 U.S.C. 71 *et seq.*) authorizes GIPSA to provide official grain inspection and weighing services and to charge and collect reasonable fees for performing these services. The fees collected are to cover, as nearly as practicable, GIPSA's costs for performing these services, including related administrative and supervisory costs. The current USGSA fees were published in the **Federal Register** on December 23, 1998 (63 FR 70990), and became effective on February 1, 1999. A correction to the minimum fees for stowage examinations was published in the **Federal Register** and became effective on February 11, 1999 (64 FR 6783).

GIPSA regularly reviews its user-fee-financed programs to determine if the fees are adequate. While GIPSA continues to search for opportunities to reduce its costs, the existing fee schedule will not generate sufficient revenues to cover program costs while maintaining an adequate reserve balance. In fiscal year 1998, GIPSA's operating costs were $23,021,166 with revenue of $21,776,323, resulting in a loss of $1,244,843 and a reserve balance of $55,862. In fiscal year 1999, GIPSA's operating costs were $22,883,063 with revenue of $22,971,204, resulting in a positive margin of $88,141. Even with the positive margin for fiscal year 1999, the reserve balance was a negative $65,686, below the desired 3-month operating reserve of approximately $5.7 million.

Employee salaries and benefits are major program costs that account for approximately 84 percent of GIPSA's total operating budget. A general and locality salary increase that averages 4.8 percent for GIPSA employees, effective January 2000, will increase program costs an estimated $691,613. Based on a review of projected fiscal year 2000 workload and operating costs, the Agency has determined that approximately half of the projected $691,613 salary increase can be absorbed through existing program efficiencies. The other half needs to be covered through an increase in fees that will collect an estimated $390,000 in additional revenues.

The hourly fees covered by this rule will generate revenue to cover the basic salary, benefits, and leave for those employees providing direct service delivery. Other associated costs, including non-salary related overhead, are collected through other fees contained in the fee schedule and are at levels that would not require any change. These fees would not be changed under this proposal.

The current hourly fees are:

	Monday to Friday (6 a.m. to 6 p.m.)	Monday to Friday (6 p.m. to 6 a.m.)	Saturday, Sunday, and overtime	Holidays
1-year contract	$25.20	$27.20	$35.40	$42.60
6-month contract	27.60	29.40	37.60	49.40
3-month contract	31.60	32.60	41.00	51.00
Noncontract	36.60	38.60	46.80	57.60

GIPSA has also identified certain unit fees, for services not performed at an applicant's facility, that contain direct labor costs and would require a fee increase. Further, GIPSA has identified those costs associated with salaries and benefits that are covered by the administrative metric tonnage fee. The 2.4 percent cost-of-living increase to salaries and benefits covered by the administrative tonnage fee results in an average overall increase of an average of 2.4 percent to the administrative tonnage fee. Accordingly, GIPSA is proposing a 2.4 percent increase to certain hourly rates, certain unit rates, and the administrative tonnage fee in 7 CFR 800.71, Table 1—Fees for Official Services Performed at an Applicant's Facility in an Onsite GIPSA Laboratory; Table 2—Services Performed at Other Than an Applicant's Facility in a GIPSA Laboratory; and Table 3, Miscellaneous Services.

List of Subjects in 7 CFR Part 800

Administrative practice and procedure, Grain.

For the reasons set out in the preamble, 7 CFR part 800 is proposed to be amended as follows:

PART 800—GENERAL REGULATIONS

1. The authority citation for part 800 continues to read as follows:

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

2. Section 800.71 is amended by revising Schedule A in paragraph (a) to read as follows:

§ 800.71 Fees assessed by the Service.

(a) * * *

Schedule A.—Fees for Official Inspection and Weighing Services Performed in the United States

TABLE 1.—FEES FOR OFFICIAL SERVICES PERFORMED AT AN APPLICANT'S FACILITY IN AN ONSITE FGIS LABORATORY [1]

	Monday to Friday (6 a.m. to 6 p.m.)	Monday to Friday (6 p.m. to 6 a.m.)	Saturday, Sunday, and Overtime [2]	Holidays
(1) Inspection and Weighing Services Hourly Rates (per service representative)				
1-year contract	$25.80	$28.00	$36.40	$43.60
6-month contract	28.40	30.20	38.60	50.60
3-month contract	32.40	33.40	42.00	52.20
Noncontract	37.60	39.60	48.00	59.00

(2) Additional Tests (cost per test, assessed in addition to the hourly rate) [3]

(i) Aflatoxin (other than Thin Layer Chromatography)	$8.50
(ii) Aflatoxin (Thin Layer Chromatography method)	20.00
(iii) Corn oil, protein, and starch (one or any combination)	1.50
(iv) Soybean protein and oil (one or both)	1.50

(v) Wheat protein (per test)	1.50
(vi) Sunflower oil (per test)	1.50
(vii) Vomitoxin (qualitative)	7.50
(viii) Vomitoxin (quantitative)	12.50
(ix) Waxy corn (per test)	1.50
(x) Fees for other tests not listed above will be based on the lowest noncontract hourly rate.	
(xi) Other services	
(a) Class Y Weighing (per carrier):	
(1) Truck/container	.30
(2) Railcar	1.25
(3) Barge	2.50

(3) Administrative Fee (assessed in addition to all other applicable fees, only one administrative fee will be assessed when inspection and weighing services are performed on the same carrier).

(i) All outbound carriers (per-metric-ton) [4]:	
(a) 1–1,000,000	$ 0.1038
(b) 1,000,001–1,500,000	0.0947
(c) 1,500,001–2,000,000	0.0512
(d) 2,000,001–5,000,000	0.0379
(e) 5,000,001–7,000,000	0.0205
(f) 7,000,001+	0.0092

[1] Fees apply to original inspection and weighing, reinspection, and appeal inspection service and include, but are not limited to, sampling, grading, weighing, prior to loading stowage examinations, and certifying results performed within 25 miles of an employee's assigned duty station. Travel and related expenses will be charged for service outside 25 miles as found in § 800.72 (a).

[2] Overtime rates will be assessed for all hours in excess of 8 consecutive hours that result from an applicant scheduling or requesting service beyond 8 hours, or if requests for additional shifts exceed existing staffing.

[3] Appeal and reinspection services will be assessed the same fee as the original inspection service.

[4] The administrative fee is assessed on an accumulated basis beginning at the start of the Service's fiscal year (October 1 each year).

TABLE 2.—SERVICES PERFORMED AT OTHER THAN AN APPLICANT'S FACILITY IN AN FGIS LABORATORY [1,2]

(1) Original Inspection and Weighing (Class X) Services:	
(i) Sampling only (use hourly rates from Table 1):	
(ii) Stationary lots (sampling, grade/factor, & checkloading):	
(a) Truck/trailer/container (per carrier)	$18.50
(b) Railcar (per carrier)	28.30
(c) Barge (per carrier)	178.50
(d) Sacked grain (per hour per service representative plus an administrative fee per hundredweight) (CWT)	0.02
(iii) Lots sampled online during loading (sampling charge under (i) above, plus):	
(a) Truck/trailer container (per carrier)	9.85
(b) Railcar (per carrier)	19.10
(c) Barge (per carrier)	108.10
(d) Sacked grain (per hour per service representative plus an administrative fee per hundredweight) (CWT)	0.02
(iv) Other services:	
(a) Submitted sample (per sample—grade and factor)	10.90
(b) Warehouseman inspection (per sample)	18.00
(c) Factor only (per factor—maximum 2 factors)	4.70
(d) Checkloading/condition examination (use hourly rates from Table 1, plus an administrative fee per hundredweight if not previously assessed) (CWT)	0.02
(e) Reinspection (grade and factor only. Sampling service additional, item (i) above)	11.90
(f) Class X Weighing (per hour per service representative)	49.20
(v) Additional tests (excludes sampling):	
(a) Aflatoxin (per test—other than TLC method)	26.30
(b) Aflatoxin (per test—TLC method)	104.00
(c) Corn oil, protein, and starch (one or any combination)	8.30
(d) Soybean protein and oil (one or both)	8.30
(e) Wheat protein (per test)	8.30
(f) Sunflower oil (per test)	8.30
(g) Vomitoxin (qualitative)	26.70
(h) Vomitoxin (quantitative)	31.80
(i) Waxy corn (per test)	9.60
(j) Canola (per test—00 dip test)	9.60
(k) Pesticide Residue Testing [3]:	
(1) Routine Compounds (per sample)	204.80
(2) Special Compounds (per service representative)	102.40
(l) Fees for other tests not listed above will be based on the lowest noncontract hourly rate from Table 1.	
(2) Appeal inspection and review of weighing service [4]:	
(i) Board Appeals and Appeals (grade and factor)	78.50
(a) Factor only (per factor—max 2 factors)	40.60
(b) Sampling service for Appeals additional (hourly rates from Table 1)	
(ii) Additional tests (assessed in addition to all other applicable fees):	
(a) Aflatoxin (per test, other than TLC)	26.30
(b) Aflatoxin (TLC)	104.00
(c) Corn oil, protein, and starch (one or any combination)	16.20
(d) Soybean protein and oil (one or both)	16.20

TABLE 2.—SERVICES PERFORMED AT OTHER THAN AN APPLICANT'S FACILITY IN AN FGIS LABORATORY [1,2]—Continued

(e) Wheat protein (per test)	16.20
(f) Sunflower oil (per test)	16.20
(g) Vomitoxin (per test—qualitative)	37.00
(h) Vomitoxin (per test—quantitative)	42.10
(i) Vomitoxin (per test—HPLC Board Appeal)	131.10
(j) Pesticide Residue Testing [3]:	
(1) Routine Compounds (per sample)	204.80
(2) Special Compounds (per service representative)	102.40
(k) Fees for other tests not listed above will be based on the lowest noncontract hourly rate from Table 1	
(iii) Review of weighing (per hour per service representative)	71.40
(3) Stowage examination (service-on-request) [3]:	
(i) Ship (per stowage space) (minimum $252.50 per ship)	50.50
(ii) Subsequent ship examinations (same as original) (minimum $151.50 per ship)	
(iii) Barge (per examination)	40.50
(iv) All other carriers (per examination)	15.50

[1] Fees apply to original inspection and weighing, reinspection, and appeal inspection service and include, but are not limited to, sampling, grading, weighing, prior to loading stowage examinations, and certifying results performed within 25 miles of an employee's assigned duty station. Travel and related expenses will be charged for service outside 25 miles as found in § 800.72 (a).

[2] An additional charge will be assessed when the revenue from the services in Schedule A, Table 2, does not cover what would have been collected at the applicable hourly rate as provided in § 800.72 (b).

[3] If performed outside of normal business, 1½ times the applicable unit fee will be charged.

[4] If, at the request of the Service, a file sample is located and forwarded by the Agency for an official agency, the Agency may, upon request, be reimbursed at the rate of $2.50 per sample by the Service.

TABLE 3.—MISCELLANEOUS SERVICES [1]

(1) Grain grading seminars (per hour per service representative) [2]	$49.20
(2) Certification of diverter-type mechanical samplers (per hour per service representative) [2]	49.20
(3) Special weighing services (per hour per service representative) [2]:	
(i) Scale testing and certification	49.20
(ii) Evaluation of weighing and material handling systems	49.20
(iii) NTEP Prototype evaluation (other than Railroad Track Scales)	49.20
(iv) NTEP Prototype evaluation of Railroad Track Scales (plus usage fee per day for test car)	110.00
(v) Mass standards calibration and reverification	49.20
(vi) Special projects	49.20
(4) Foreign travel (per day per service representative)	445.40
(5) Online customized data EGIS service:	
(i) One data file per week for 1 year	500.00
(ii) One data file per month for 1 year	300.00
(6) Samples provided to interested parties (per sample)	2.50
(7) Divided-lot certificates (per certificate)	1.50
(8) Extra copies of certificates (per certificate)	1.50
(9) Faxing (per page)	1.50
(10) Special mailing (actual cost)	
(11) Preparing certificates onsite or during other than normal business hours (use hourly rates from Table 1)	

[1] Any requested service that is not listed will be performed at $49.20 per hour.

[2] Regular business hours—Monday thru Friday—service provided at other than regular hours charged at the applicable overtime hourly rate.

David R. Shipman,

Acting Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 99–33930 Filed 12–30–99; 8:45 am]

BILLING CODE 3410–EN–U

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

7 CFR Part 868

RIN 0580–AA70

Fees for Rice Inspection

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Grain Inspection, Packers and Stockyards Administration (GIPSA) is proposing an approximate 4.8 percent fee increase for all hourly rates and certain unit rates. The fees apply to Federal Rice Inspection performed under the Agricultural Marketing Act (AMA) of 1946. These increases are needed to cover increased operational costs resulting from the mandated January 2000 Federal pay increase.

DATES: Written comments must be submitted on or before March 3, 2000.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Written comments must be submitted to Sharon Vassiliades, GIPSA, USDA, 1400 Independence Avenue, SW, Room 0623, Washington, DC 20250–3649, or faxed to (202) 720–4628. Comments may also be sent by electronic mail or Internet to: comments@gipsadc.usda.gov. All comments should make reference to the date and page number of this issue of the **Federal Register** and will be available for public inspection in the above office during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: David Orr, Director, Field Management Division, at his Email address: Dorr@gipsadc.usda.gov or telephone him at (202) 720–0228.

SUPPLEMENTARY INFORMATION:

Executive Order 12866, Regulatory Flexibility Act, and the Paperwork Reduction Act

This rule has been determined to be nonsignificant for the purpose of Executive Order 12866 and, therefore,

has not been reviewed by the Office of Management and Budget.

Also, pursuant to the requirements set forth in the Regulatory Flexibility Act, James R. Baker, Administrator, GIPSA, has determined that this proposed rule will not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

GIPSA regularly reviews its user-fee-financed programs to determine if the fees are adequate. GIPSA has and will continue to seek out cost saving opportunities and implement appropriate changes to reduce costs. Such actions can provide alternatives to fee increases. However, even with these efforts, GIPSA's existing fee schedule will not generate sufficient revenues to cover program costs while maintaining an adequate reserve balance. In fiscal year 1998, GIPSA's operating costs were $3,820,820 with revenue of $4,011,446, resulting in a positive margin of $190,626 and a negative reserve balance of $895,584. As of September 30, 1999, GIPSA's operating costs were $4,105,564 with revenue of $4,412,131 that resulted in a positive margin of $306,567 and a negative reserve balance of $508,628.

Employee salaries and benefits are major program costs that account for approximately 84 percent of GIPSA's total operating budget. A general and locality salary increase that averages 4.8 percent for GIPSA employees, effective January 2000, will increase program costs. This salary adjustment will increase GIPSA's costs by approximately $135,000, based on the projected fiscal year 2000 work volume of 3.9 million metric tons.

We have reviewed the financial position of our rice inspection program based on the increased salary and benefit cost along with the projected fiscal year 2000 workload. Based on that review, we have concluded that we cannot absorb the increased costs due to salary increase with the current negative reserve balance. The proposed fee increase will collect an estimated $138,000 in additional revenues.

The proposed fee increase primarily applies to GIPSA customers that produce, process, and market rice for the domestic and international markets. There are approximately 550 such customers located primarily in the States of Arkansas, Louisiana, and Texas. Many of these customers meet the criteria for small entities established by the Small Business Administration criteria for small businesses. Even though the fees would be raised, the increase would not be excessive (4.8 percent) and should not significantly affect these entities. Those entities are under no obligation to use our service and, therefore, any decision on their part to discontinue the use of our service should not prevent them from marketing their products.

There would be no additional reporting or record keeping requirements imposed by this action. In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection and record keeping requirements in Part 800 have been previously approved by the Office of Management and Budget under control number 0580–0013. GIPSA has not identified any other Federal rules which may duplicate, overlap, or conflict with this proposed rule.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have a retroactive effect. The USGSA provides in section 87g that no subdivision may require or impose any requirements or restrictions concerning the inspection, weighing, or description of grain under the Act. Otherwise, this proposed rule will not preempt any State or local laws, regulations, or policies unless they present irreconcilable conflict with this proposed rule. There are no administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this proposed rule.

Proposed Action

Under the provisions of the Agricultural Marketing Act of 1946 (7 U.S.C. 1621, *et seq.*), rice inspection services are provided upon request and GIPSA must collect a fee from the customer to cover the cost of providing such services. Section 203(h) of the AMA (7 U.S.C. 1622(h)) provides for the establishment and collection of fees that are reasonable and, as nearly as practicable, cover the costs of the services rendered. These fees cover the GIPSA administrative and supervisory costs for the performance of official services, including personnel compensation, personnel benefits, travel, rent, communications, utilities, contractual services, supplies, and equipment.

The rice inspection fees were last amended on February 12, 1999, and became effective March 1, 1999 (64 FR 7057). These fees were to cover, as nearly as practicable, the level of operating costs as projected for fiscal year 1999. They presently appear at 7 CFR 868.91 in Tables 1 and 2.

GIPSA continually monitors its cost, revenue, and operating reserve levels to ensure that there are sufficient resources for operations. During fiscal year 1998, GIPSA implemented cost-saving measures in an effort to provide more cost effective services. The purpose of these measures was to reduce operating costs in order to reduce the negative retained earnings in this program. The cost containment measures included employee buyouts and better cross utilization of personnel between programs.

In fiscal year 1998, the program generated revenue of $4,011,446 with operating costs of $3,820,820, resulting in a positive margin of $190,626. Even though we generated a positive margin for the year, we continued to operate with a negative reserve balance of $895,584. The rice program's fiscal year 1999 revenue was $4,412,131 with operating costs of $4,105,564. In fiscal year 1999, we operated with a positive margin of $306,567 and reduced our reserve balance to a negative $508,628. The rice inspection program has been slowly recovering from a long-standing deficit. Through a series of small fee increases and cost cutting measures, GIPSA has reduced the level of the negative reserve balance from $939,147 in fiscal year 1994 to its current level of negative $508,628.

However, employee salaries and benefits are major program costs that account for approximately 84 percent of GIPSA's total operating budget. A general and locality salary increase that averages 4.8 percent for GIPSA employees, effective January 2000, will increase program costs. This salary adjustment will increase GIPSA's costs by approximately $135,000. GIPSA cannot absorb this increase in salary costs with a deficit in the reserve balance and, at the same time, continue our efforts to reduce costs to eliminate the existing deficit. In fiscal years 1998 and 1999, GIPSA inspected 3.9 million metric tons of rice, and projections indicate that similar amounts will be inspected for fiscal year 2000. With no projected increase in the number of rice inspections, we anticipate operating costs to remain fairly constant except for the projected $135,000 increase in salaries and benefits. GIPSA estimates that the fee increase will generate an additional $138,000 in revenue, based on the projected fiscal year 2000 work volume of 3.9 million metric tons.

The costs associated with salaries and benefits are recovered by the hourly rates for personnel performing direct service. Other associated costs, including non-salary related overhead, are collected through other fees

contained in the fee schedule and are at levels that would not require any change. These fees would not be changed under this proposal. As such, GIPSA is proposing a 4.8 percent increase to the hourly rates and certain unit rates in 7 CFR Part 868.91, Table 1—Hourly Rates/Unit Rate Per CWT and Table 2—Unit Rates. Currently, the regular workday contract and noncontract fees are $40.80 and $50.00, respectively, while the nonregular workday contract and noncontract fees are $56.80 and $69.00, respectively. The unit rate per hundredweight for export port services is currently $.05 per hundredweight. The other current unit rates are:

Service	Rough rice	Brown rice for processing	Milled rice
Inspection for quality (per lot, sublot, or sample inspection)	$32.90	$28.40	$20.20
Factor analysis for any single factor (per factor):			
(a) Milling yield (per sample)	25.50	25.50	.....
(b) All other factors (per factor)	12.10	12.10	12.10
Total oil and free fatty acid	.....	40.00	40.00
Interpretive line samples:			
(a) Milling degree (per set)	.....	.....	85.10
(b) Parboiled light (per sample)	.....	.....	21.30
Extra copies of certificates (per copy)	3.00	3.00	3.00

List of Subjects in 7 CFR Part 868

Administrative practice and procedure, Agricultural commodities.

For reasons set out in the preamble, 7 CFR part 868 is proposed to be amended as follows:

PART 868—GENERAL REGULATIONS AND STANDARDS FOR CERTAIN AGRICULTURAL COMMODITIES

1. The authority citation for part 868 continues to read as follows:

Authority: Secs. 202–208, 60 Stat. 1087, as amended (7 U.S.C. 1621 *et seq.*)

2. Section 868.91 is revised to read as follows:

§ 868.91 Fees for certain Federal Rice Inspection Services.

The fees shown in Tables 1 and 2 apply to Federal Rice Inspection Services.

TABLE 1.—HOURLY RATES/UNIT RATE PER CWT

[Fees for Federal Rice Inspection Services]

Service [1]	Regular workday (Monday-Saturday)	Nonregular workday (Sunday-Holiday)
Contract (per hour per Service representative)	$42.80	$59.60
Noncontract (per hour per Service representative)	52.40	72.40
Export Port Services [2] (per hundredweight)	.052	.052

[1] Original and appeal inspection services included: Sampling, grading, weighing, and other services requested by the applicant when performed at the applicant's facility.

[2] Services performed at export port locations on lots at rest.

TABLE 2.—UNIT RATES

Service [1] [3]	Rough rice	Brown rice for processing	Milled rice
Inspection for quality (per lot, sublot, or sample inspection)	$34.50	$29.80	$21.20
Factor analysis for any single factor (per factor):			
(a) Milling yield (per sample)	26.75	26.75	.....
(b) All other factors (per factor)	12.70	12.70	12.70
Total oil and free fatty acid	.....	42.00	42.00
Interpretive line samples. [2]			
(a) Milling degree (per set)	.....	.....	89.20
(b) Parboiled light (per sample)	.....	.....	22.35
Extra copies of certificates (per copy)	3.00	3.00	3.00

[1] Fees apply to determinations (original or appeals) for kind, class, grade, factor analysis, equal to type, milling yield, or any other quality designation as defined in the U.S. Standards for Rice or applicable instructions, whether performed singly or combined at other than at the applicant's facility.

[2] Interpretive line samples may be purchased from the U.S. Department of Agriculture, GIPSA, FGIS, Technical Services Division, 10383 North Executive Hills Boulevard, Kansas City, Missouri 68030. Interpretive line samples also are available for examination at selected FGIS field offices. A list of field offices may be obtained from the Director, Field Management Division, USDA, GIPSA, FGIS, 1400 Independence Avenue, SW, STOP 3630, Washington, DC 20250–3630. The interpretive line samples illustrate the lower limit for milling degrees only and the color limit for the factor ''Parboiled Light'' rice.

[3] Fees for other services not referenced in Table 2 will be based on the noncontract hourly rate listed in § 868.90, Table 1.

Dated: December 20, 1999.

David R. Shipman,

Acting Administrator, Grain Inspector, Packers and Stockyards Administration.

[FR Doc. 99–33931 Filed 12–30–99; 8:45 am]

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FEDERAL HOUSING FINANCE BOARD

12 CFR Part 917

[No. 99–64]

RIN 3069–AA90

Powers and Responsibilities of Federal Home Loan Bank Boards of Directors and Senior Management

AGENCY: Federal Housing Finance Board.

ACTION: Proposed rule.

SUMMARY: The Federal Housing Finance Board (Finance Board) is proposing new regulations to set forth the responsibilities of the boards of directors and senior management of the Federal Home Loan Banks (Banks) as a means of ensuring that they fulfill their duties to operate the Banks in a safe and sound manner and in furtherance of the Banks' housing finance and community lending mission.

DATES: Comments on this proposed rule must be received in writing on or before February 2, 2000.

ADDRESSES: Comments should be mailed to: Elaine L. Baker, Secretary to the Board, Federal Housing Finance Board, 1777 F Street, NW, Washington, DC 20006. Comments will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: James L. Bothwell, Director and Chief Economist, (202) 408–2821; Scott L. Smith, Deputy Director, (202) 408–2991; Julie Paller, Senior Financial Analyst (202) 408–2842; Office of Policy, Research and Analysis; Eric M. Raudenbush, Senior Attorney-Advisor, (202) 408–2932; Office of General Counsel, Federal Housing Finance Board, 1777 F Street, NW, Washington, DC 20006.

SUPPLEMENTARY INFORMATION:

I. Background

A. Devolution of Corporate Governance Authorities

Prior to the enactment of the Financial Institutions Reform, Recovery and Enforcement Act (FIRREA) of 1989, Pub. L. 101–73, 103 Stat. 413 (1989), many decisions regarding the corporate governance of the Banks were either made or approved by the Bank System regulator (which, prior to FIRREA, was the former Federal Home Loan Bank Board). Since the creation of the Finance Board and the reform of the Bank System under FIRREA, it has been the policy of the Finance Board to devolve to the Banks authority to act on most matters of corporate governance without the prior approval of the Finance Board, to the extent permitted by statute and to the extent such devolution does not compromise the Finance Board's duty to ensure the safety and soundness of the Banks. The Finance Board has long recognized the importance of maintaining its regulatory independence, and that the safety and soundness regulator of the Banks should not involve itself in the business affairs of the Banks, nor make governance decisions that more properly lie with the Banks as corporate entities.[1] Despite this regulatory policy, statutory provisions have required that certain matters pertaining to corporate governance remain within the decision-making power of the Finance Board.

On November 12, 1999, the President signed into law the Federal Home Loan Bank System Modernization Act of 1999[2] (Modernization Act), Pub. L. 106–102, Title VI (1999), which, among other things, removed the remaining corporate governance authorities that previously had been vested in the Finance Board under the Federal Home Loan Bank Act (Bank Act). 12 U.S.C. 1422–49. To implement these statutory changes, the Finance Board has published separately an interim final rule removing regulations that required Finance Board approval for the following matters of corporate governance: selection and compensation of Bank officers and employees; entering into building leases and purchases; adoption and revision of Bank bylaws; dividend payments; application forms for Bank advances; Bank approval of conditional advances; and transfer of advances and advance participations. *See* 64 FR 71275 (1999).

Management responsibilities over the Banks have been rightfully removed from the statutory purview of the Finance Board. However, the Finance Board continues to be responsible for ensuring that the Banks operate in a financially safe and sound manner and carry out their statutory housing finance and community lending mission. *See* 12 U.S.C. 1422a(a)(3). In that capacity, the Finance Board believes that it is prudent to set forth explicitly in regulation a state-of-the-art corporate governance framework for the Banks' boards of directors and senior management.

The proposed rule includes provisions defining the responsibilities—and thus the accountability—of the boards of directors and senior management of the Banks with regard to operating the Banks in a safe and sound manner and ensuring that the Banks achieve their statutory mission. These responsibilities include matters such as the adoption and annual review of risk management policies, periodic risk assessments, the maintenance of effective internal controls, the establishment of independent audit committees, and adoption of and compliance with a strategic business plan, as further detailed below.

B. Effect of the Proposed Rule To Reorganize the Finance Board's Regulations

On September 27, 1999, the Finance Board published a notice of proposed rulemaking to reorganize its regulations to implement a more logical and efficient presentation of the regulations governing the Banks and the Bank System. *See* 64 FR 52148 (1999). Because it is anticipated that a final reorganization rule will be in effect before the substantive regulatory amendments contained in this proposal would become final, cross-references appearing in the text of this proposed rule are made to the new section and part numbers that would be in effect once the final reorganization rule is adopted. Where such references are to provisions that currently exist under different section or part numbers, the existing citation has been noted in this preamble.

C. The Banks as Corporate Entities

Each state generally has laws of incorporation that require, among other things, a corporation to be managed by a board of directors. Consistent with this general corporate concept, the Bank Act (as amended by the Modernization Act) provides for the management of each Bank to be vested in the Bank's board of directors. *See* 12 U.S.C. 1427(a). The Bank Act states that each Bank is a corporate body. *See id.* at 1432(a). In addition to authorizing certain enumerated corporate and banking powers, *see id.* at 1431, 1432, the Bank Act grants each Bank all such incidental powers as are consistent with the provisions of the Bank Act and customary and usual in corporations generally. *See id.* at 1432(a). The Finance Board believes that, attendant to the exercise of customary and usual

[1] *See* General Accounting Office, *Federal Home Loan Bank System—Reforms Needed to Promote Its Safety, Soundness, and Effectiveness* (Dec. 1993).

[2] The Modernization Act is Title VI of the larger Gramm-Leach-Bliley Act. Pub. L. 106–102 (1999).

corporate powers, the Banks' boards of directors are subject to the same general fiduciary duties of care and loyalty to which the board of a state-chartered business or banking corporation would be subject, although this previously has not been set forth in regulation.

The duties, responsibilities and privileges of a director of a Bank derive from a source different from that of a director of a state-chartered business or banking corporation. Each Bank is created in accordance with Federal law to further public policy, and its statutory powers and purposes are not subject to change except by the Congress. A Bank's board of directors has neither the right nor the duty to alter the purpose of the Bank, whereas an ordinary corporate board of directors may approve mergers, consolidations and changes in the corporate charter that could alter the objectives and nature of the business of the corporation. The directors of a Bank are responsible for managing that Bank to achieve the statutorily-mandated objectives of promoting housing finance and community lending and meeting the Bank's statutory obligations (*e.g.,* paying a portion of the interest on obligations of the Resolution Funding Corporation (REFCORP), *see id.* at 1441b, and making contributions to the AHP, *see id.* at 1430(j)), all in a financially safe and sound manner.

All Banks are subject to the supervision of the Finance Board. The bulk of the Banks' corporate powers, duties and responsibilities are described in sections 10, 11, 12 and 16 of the Act. *Id.* at 1430, 1431, 1432 and 1436. Section 10 of the Act authorizes each Bank to make secured advances to its members upon collateral sufficient, in its judgment, to fully secure the advance, and to certain eligible nonmember borrowers (which, in this rule, the Finance Board has referred to as ''associates'') upon statutorily specified collateral. *See id.* at 1430(a), 1430b. The Banks may conduct correspondent services, establish reserves, make investments and pay dividends, all subject to statutory limitations. *See id.* at 1431, 1436. Under section 12(a) of the Act, a Bank has the power to sue and be sued. *See id.* at 1432(a). In addition, each Bank has adopted bylaws that address such matters as: the conduct of meetings of the board of directors; existence, composition, conduct and administration of committees of the board of directors; and indemnification.

II. Analysis of Proposed Rule

A. Overview

Proposed part 917 for the first time would set forth in one place and in regulation the duties and responsibilities of a Bank's board of directors and of senior management of the Bank. It would make clear the Finance Board's belief that oversight of management by a strong and proactive board of directors is critical to the safe and successful operation of each Bank. Generally, under proposed part 917, the board of directors of each Bank would be responsible for: (1) Approving and periodically reviewing the significant policies of the Bank; (2) understanding the major risks taken by the Bank, setting acceptable tolerance levels for these risks and requiring that senior management takes the steps necessary to identify, measure, monitor and control these risks; (3) monitoring the Bank's compliance with applicable statutes, regulation and policy (both of the Finance Board and the Bank); (4) adopting and maintaining policies to ensure that the Bank carries out its housing finance and community lending mission; (5) approving the organizational structure and delegations of authority; and (6) overseeing senior management's establishment and maintenance of an adequate and effective system of internal controls and senior management's monitoring of the effectiveness of the internal control system.

Proposed part 917 also provides generally that senior management of each Bank would be responsible for: (1) Implementing strategies and policies approved by the Bank's board; (2) developing processes that identify, measure, monitor and control risks incurred by the Bank; (3) maintaining an organizational structure that clearly assigns responsibility, authority and reporting relationships; (4) ensuring that delegated responsibilities are effectively carried out; (5) setting appropriate internal control policies; and (6) monitoring the adequacy and effectiveness of the internal control system.

The proposed requirements for the Banks' boards of directors and senior management generally are based on widely accepted best corporate practices. They are intended to require that the boards of directors oversee both risk management for safety and soundness and achievement of the public purpose of supporting housing and community lending. Oversight by both the boards of directors and senior management is integral to the overall business operation of a Bank. The first line of defense in ensuring safety and soundness is an effective corporate governance structure within the Banks themselves. Having an active, informed and engaged board of directors is the cornerstone of a well-run entity.

In addition, recognition of the importance of mission achievement must originate with the board of directors and fulfillment of mission at all levels of the Bank must be promoted and encouraged by the board. The proposed rule would require that the boards of directors of the Banks fulfill these important responsibilities.

B. Definitions—§ 917.1

Section 917.1 of the proposed rule sets forth definitions of terms used in part 917. These terms are discussed below as they relate to the substantive provisions of the proposed rule.

C. General Authorities and Duties of Bank Boards of Directors—§ 917.2

The first sentence of § 917.2(a) of the proposed rule would implement the first clause of section 7(a) of the Bank Act, 12 U.S.C. 1427(a), which states that the management of each Bank shall be vested in its board of directors. The Finance Board interprets this statutory provision as charging each Banks' board of directors with the ultimate legal responsibility for guiding the activities of the Bank, and not as a requirement that a Bank's board of directors administer the day-to-day operations of the Bank. Accordingly, the second sentence of proposed § 917.2(a) makes clear that a Bank's board of directors may delegate responsibility for such day-to-day operations to Bank management, but that, in so doing, may not and can not delegate its ultimate statutory responsibility for the management of the Bank.

Proposed § 917.2(b) enumerates the duties that would apply to all official activities of each board director. Specifically, proposed § 917.2(b)(1) would charge each director with the duty to carry out his or her duties as director in good faith, in a manner such director believes to be in the best interests of the Bank, and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances. Proposed § 917.2(b)(2) would implement section 7(j) of the Bank Act, *id.* at 1427(j), by requiring that directors administer the affairs of the Bank fairly and impartially.

Proposed § 917.2(b)(3) would require that each board director be financially literate (*i.e.,* have a working familiarity with basic finance and accounting practices), or become financially literate

within a reasonable time after his or her election or appointment to the board of directors. This financial literacy may be obtained through training provided by the Bank if a director does not possess such financial literacy at the time of his or her election or appointment to the board. Finally, proposed § 917.2(b)(4) would charge each Bank director with the general duty to direct the operations of the Bank in conformity with the requirements of the Bank Act and the Finance Board's regulations.

In order to ensure that Bank boards of directors are able to oversee effectively the management of the Banks, proposed § 917.2(c)(1) would make clear that this section simply codifies the existing authority all Bank boards of directors, and all committees thereof, have to retain staff and outside consultants at the expense of the Bank, as necessary to carry out their official duties and responsibilities. Proposed § 917.2(c)(2) states that the board of directors, or any committee thereof, may require any internal Bank staff providing services to the board or committee on a particular matter to report directly to the board or committee on that matter.

D. Risk Management—§ 917.3

Section 917.3 of the proposed rule sets forth the risk management responsibilities of Bank boards of directors and senior management. Proposed § 917.3(a)(1) would require that, beginning 90 days after the effective date of this rule in final form, each Bank's board of directors have in effect at all times a risk management policy addressing the Bank's exposure to credit risk, market risk, liquidity risk, business risk and operations risk, as those terms are defined in proposed § 917.1. The risk limits set forth in the policy shall be consistent with the Bank's capital position and its ability to measure and manage risk. While, under proposed § 917.3(a)(1) a Bank need not submit its risk management policy to the Finance Board, these policies will be reviewed by the Finance Board as part of the ongoing examination process.

Proposed § 917.3(a)(2)(i) would require that the Bank's board of directors review the Bank's risk management policy on at least an annual basis, while proposed § 917.3(a)(2)(ii) would make clear that each Bank's board shall amend its risk management policy, as appropriate to meet changing circumstances. Proposed § 917.3(a)(2)(iii) provides that the board of directors also would be required to re-adopt the risk management policy, including interim amendments, not less often than every three years, as appropriate, based on the board's reviews of the policy. In addition to providing consistency, this requirement would make clear that, despite the turnover in board personnel that will occur over a number of years, all or most current members of a Bank's board of directors will be thoroughly familiar with the Bank's risk management policy, will have given meaningful consideration to its provisions and will have expressed an opinion regarding the adequacy of the policy through the voting process. Proposed § 917.3(a)(2)(iv) also would make clear that each Bank's board of directors has the ultimate responsibility to ensure that policies and procedures are in place to achieve Bank compliance at all times with the risk management policy.

Section 917.3(b) of the proposed rule sets forth several specific requirements for each Bank's risk management policy. Proposed § 917.3(b)(1) would require that each Bank's risk management plan describe how the Bank will comply with its capital structure plan required under section 6(b) of the Bank Act (as amended by the Modernization Act), 12 U.S.C. 1426(b), to be submitted to the Finance Board within 270 days of the Finance Board's promulgation of regulations prescribing uniform capital standards for the Banks pursuant to section 6(a) of the Bank Act (as amended by the Modernization Act), *id.* at 1426(a). Proposed § 917.3(b)(2) would require each Bank's risk management policy to set forth tolerance levels for the market and credit risk components.

Proposed § 917.3(b)(3) would require each Bank's risk management policy to set forth standards for the Bank's management of credit, market, liquidity, business and operations risks. Credit risk is defined in proposed § 917.1 as the risk that the market value of an obligation will decline as a result of deterioration in creditworthiness. The creditworthiness of an obligation can be affected by both the creditworthiness of the specific counterparty or the market's general perception of the creditworthiness of an entire class of obligations. The Banks must assess the creditworthiness of issuers, obligors, or other counterparties prior to acquiring investments and, under proposed § 917.3(b)(3)(i), the Bank's risk management policy would be required to include the standards and criteria for such an assessment. In addition, the credit risk portion of each Bank's risk management policy also should identify the criteria for selecting brokers, dealers and other securities firms with which the Bank may execute transactions.

Market risk is defined in proposed § 917.1 as the risk of loss in value of the Bank's portfolio resulting from movements in interest rates, foreign exchange rates and equity and commodity prices. Proposed § 917.3(b)(3)(ii) would require that each Bank's risk management policy establish standards for the methods and models used to measure and monitor market risk, including maximum exposure thresholds and scenarios for measuring risk exposure.

Liquidity risk is defined in proposed § 917.1 as the risk that a Bank would be unable to meet its obligations as they come due or meet the credit needs of its members and eligible nonmember borrowers in a timely and cost-efficient manner. Operational liquidity addresses day-to-day or ongoing liquidity needs under normal circumstances. Operational liquidity needs may be either anticipated or unanticipated. Contingency liquidity addresses the same liquidity needs, but under abnormal or unusual circumstances in which a Bank's access to the capital markets is impeded. This impediment may result from a market disruption, operational failure, or real or perceived credit problems. Proposed § 917.3(b)(3)(iii) would require that each Bank's risk management policy indicate the Bank's sources of liquidity, including specific types of investments to be held for liquidity purposes, and the methodology to be used for determining the Bank's operational and contingency liquidity needs. While the Bank System Financial Management Policy (FMP) currently governs Bank liquidity requirements, it is anticipated that the Finance Board will promulgate new liquidity regulations in a future rulemaking.

Operations risk is defined in proposed § 917.1 as the risk of an unexpected loss to a Bank resulting from human error, fraud, unenforceability of legal contracts, or deficiencies in internal controls or information systems. Proposed § 917.3(b)(3)(iv) would require that each Bank's risk management policy address operations risk by setting forth standards for an effective internal control system (as described in more detail in the discussion of proposed § 917.4 below), including periodic testing and reporting.

Business risk is defined in proposed § 917.1 as the risk of an adverse impact on a Bank's profitability resulting from external factors as may occur in both the short and long run. Such factors include: continued financial services industry consolidation; declining membership base; concentration of borrowing among members; and increased inter-Bank competition. Proposed § 917.3(b)(3)(v) would require that each Bank's risk management

policy identify these risks and include strategies for mitigating such risks, including contingency plans where appropriate.

In order for each Bank to create and maintain a meaningful risk management policy, it is important that the boards of directors be cognizant of the strategic risks facing the Bank. Therefore, proposed § 917.3(c) would require that senior management of each Bank perform, at least annually, a written risk assessment that identifies and evaluates all material risks, including both quantitative and qualitative aspects, that could adversely affect the achievement of the Bank's performance objectives and compliance requirements. Proposed § 917.3(c) also requires that the risk assessment be in written form and be reviewed by the Bank's board of directors promptly upon its completion.

E. Internal Control System—§ 917.4

While the existing FMP requires that the management of each Bank establish internal control systems, the FMP provides no guidance on how to ascertain the sufficiency of the systems. There have been several instances where internal control weaknesses have been discovered through the Finance Board's examination process. As a result, the Finance Board believes it prudent to provide more specific requirements for the internal control process that must be in place at each Bank.

In developing requirements for internal control processes for the Banks, the Finance Board reviewed the available literature on the appropriate internal control systems for financial institutions. Included in this review was the Basle Committee on Banking Supervision's (BCBS) Framework for Internal Control Systems published in September 1998 (hereinafter Basle Committee Report) and the Committee of Sponsoring Organizations of the Treadway Commission's Internal Control—Integrated Framework Report published in September 1992 (hereinafter Treadway Commission Report). The recommendations contained in these Reports are considered to be state of the art for defining, implementing, monitoring, and evaluating internal control systems.

According to the Basle Committee Report, a system of effective internal controls is a critical component of bank management and a foundation for safe and sound operation of a banking organization. A strong system of internal controls can help a bank meet its goals and objectives, achieve long-term profitability targets, and maintain reliable financial and managerial reporting. An internal control system also can help to: (1) Ensure the bank is in compliance with laws, regulations and the bank's internal policies and procedures; (2) safeguard assets; and (3) decrease the risk of damage to the bank's reputation.

The Treadway Commission Report defines internal controls as a process, effected by the board of directors, management and other personnel, designed to provide reasonable assurance regarding the achievement of objectives in the: (1) Effectiveness and efficiency of operations; (2) reliability of financial reporting; and (3) compliance with applicable laws and regulations.

Both Reports discuss basic components or principles for establishing and assessing internal control—*i.e.,* management oversight and the control environment, risk recognition and assessment, control activities and segregation of duties, information and communication, and monitoring activities and correcting deficiencies.

The provisions of § 917.4 of the proposed rule were adapted from the basic components and principles in the Basle Committee and Treadway Commission Reports. The Finance Board believes that appropriate internal controls will be critical to the successful devolution of full corporate governance authority to the Banks. The proposed rule would provide the framework for an effective internal control system, and establish senior management and board of directors' responsibilities regarding internal controls.

Proposed § 917.4(a)(1) would require each Bank to establish and maintain an effective internal control system that addresses: (i) The efficiency and effectiveness of Bank activities; (ii) the safeguarding of assets; (iii) the reliability, completeness and timely reporting of financial and management information and transparency of such information to the Bank's board of directors and to the Finance Board; and (iv) compliance with applicable laws, regulations, policies, supervisory determinations and directives of the Bank's board of directors and senior management.

Proposed § 917.4(a)(2) enumerates certain minimum ongoing internal control activities that the Finance Board considers to be necessary in order for the internal control objectives described in proposed § 917.4(a)(1) to be achieved. These activities include: (i) Top level reviews by the Bank's board of directors and senior management; (ii) activity controls, including review of standard performance and exception reports; (iii) physical and procedural controls adequate to safeguard, and prevent the unauthorized use of, assets; (iv) monitoring for compliance with the risk tolerance limits set forth in the risk management policy that would be required under proposed § 917.3(a); (v) any required approvals and authorizations for specific activities; and (vi) any required verifications and reconciliations for specific activities.

Section 917.4(b) of the proposed rule would charge each Bank's board of directors with the responsibility to ensure that the internal control system required under proposed § 917.4(a)(1) is established and maintained, and to oversee senior management's implementation of the system on an ongoing basis. Under proposed § 917.4(b), a Bank's board of directors will be considered to have met these general requirements on internal control system establishment, maintenance and oversight if it: (1) Conducts periodic discussions with senior management regarding the effectiveness of the internal control system; (2) ensures that an effective and comprehensive internal audit of the internal control system is performed annually; (3) requires internal control deficiencies to be reported to the Bank's board of directors in a timely manner and ensures that such deficiencies are addressed promptly; (4) conducts a timely review of evaluations of the effectiveness of the internal control system made by auditors and Finance Board examiners; (5) ensures that senior management promptly and effectively addresses recommendations and concerns expressed by auditors and Finance Board examiners regarding weaknesses in the internal control system; (6) reports internal control deficiencies, and the corrective action taken, to the Finance Board in a timely manner; (7) establishes, documents and communicates a clear and effective organizational structure for the Bank; (8) ensures that all delegations of board authority state the extent of the authority and responsibilities delegated; and (9) establishes reporting requirements.

Section 917.4(c) of the proposed rule would require senior management at each Bank to establish, implement and maintain the internal control system under the direction of the Bank's board of directors. Under proposed § 917.4(c), specific actions on the part of senior management that would be necessary to fulfill these responsibilities include: (1) Establishing, implementing and effectively communicating to Bank personnel policies and procedures that are adequate to ensure that internal control activities necessary to maintain

an effective internal control system are an integral part of the daily functions of all Bank personnel; (2) ensuring that all Bank personnel fully understand and comply with all policies and procedures; (3) ensuring appropriate segregation of duties among Bank personnel and that personnel are not assigned conflicting responsibilities; (4) establishing effective paths of communication throughout the organization in order to ensure that Bank personnel receive necessary and appropriate information; (5) developing and implementing procedures that translate the major business strategies and policies established by the board of directors into operating standards; (6) ensuring adherence to the lines of authority and responsibility established by the Bank's board of directors; (7) overseeing the implementation and maintenance of management information and other systems; (8) establishing and implementing an effective system to track internal control weaknesses and the actions taken to correct them; and (9) monitoring and reporting to the Bank's board of directors the effectiveness of the internal control system on an ongoing basis.

F. Audit Committees—§ 917.5

Section 917.5 of the proposed rule would require that each Bank's board of directors establish an audit committee. Current Finance Board requirements for audit committees are contained in Finance Board Res. No. 92–568.1 (July 22, 1992) and Finance Board Advisory Bulletin 96–1 (Feb. 29, 1996).

Resolution No. 92–568.1 contains guidelines intended to be the minimum standards that should be adopted by the Banks for revisions of the respective audit charters. The guidelines require that: (1) Audit committee charters include a statement of the audit committee's responsibilities, including a statement of its purpose to assist the full board of directors in fulfillment of its fiduciary responsibilities; (2) the audit committee shall consist of at least three board members and shall include appointed directors and elected directors; (3) that in determining the membership of the audit committee, the board of directors should provide for continuity of service; (4) the audit committee shall meet at least twice annually with the audit director and the audit committee shall meet in executive session with both the audit director and the external auditors at least annually; (5) the audit committee shall oversee the selection, compensation, and performance evaluation of the audit director; (6) written minutes shall be prepared for each meeting and a copy of such minutes forwarded to the Finance Board; and (7) the charters of the audit director and audit committee shall be reviewed and approved at least annually by the audit committee and the board of directors, respectively.

Advisory Bulletin 96–1 communicated examination findings regarding certain Bank practices that may tend to reduce the independence of the internal audit function, specifically the processes by which Bank audit director compensation is determined and performance is evaluated. The Bulletin indicated that examiners would review measures taken by the audit committee to assure the independence from management of the internal audit function, and to fulfill its responsibility to select, set the compensation of, and evaluate the performance of the audit director, and specified that all Bank audit committees should review their current practices and revise these as appropriate.

Proposed § 917.5 would set forth a clear regulatory requirement that each Bank have an audit committee, and would govern the audit committees' independence and their responsibilities for oversight of Bank operations. The proposed requirements for audit committees are based on standard corporate requirements and best practices. In developing the appropriate requirements for Bank audit committees, the Finance Board reviewed the audit committee regulations of other federal financial institution regulatory agencies and the Report and Recommendations of the Blue Ribbon Committee on Improving the Effectiveness of Corporate Audit Committees (Feb. 8, 1999) (hereinafter Blue Ribbon Committee Report). The Securities and Exchange Commission encouraged the New York Stock Exchange and the National Association of Securities Dealers to form a private sector body to investigate perceived problems in financial reporting. Accordingly, the Blue Ribbon Committee was formed in October 1998 to take an objective look at U.S. corporate financial reporting, specifically assessing the current mechanisms for oversight and accountability among corporate audit committees, independent auditors, and financial and senior management.

Proposed § 917.5(a) would require that each Bank's board of directors establish an audit committee. Proposed §§ 917.5(b)(1) and (2) would require that each Bank's audit committee consist of five or more board directors, each of whom meets the independence criteria discussed below, and include a balance of representatives of community financial institutions, as defined in section 2(13) of the Bank Act (as amended by the Modernization Act) 12 U.S.C. 1422(13), and other members and of appointed and elected directors of the Bank. The requirement in proposed § 917.5(b)(1) that the audit committee comprise five or more persons differs from the recommendation of the Blue Ribbon Committee Report that the audit committee comprise a minimum of three directors. The Finance Board believes it is important that the audit committee include representatives of large and small members and appointed and elected directors of the Bank in order to prevent dominance by one particular interest. A minimum of five members is necessary to achieve diverse representation on the audit committee.

Proposed § 917.5(b)(3) would require that the terms of audit committee members be appropriately staggered to provide for continuity of service, and to avoid a complete, or substantial, turnover of the membership of the audit committee in any one year.

Under proposed § 917.2, all members of a Bank's board of directors would be required to be financially literate; that is, to be able to read and understand the Bank's balance sheet and income statement and to ask substantive questions of internal and external auditors. In addition to this general requirement, proposed § 917.5(b)(4) would require that at least one member of each bank's audit committee have extensive accounting or related financial management experience. The Finance Board requests comment as to whether this requirement regarding accounting or financial management experience should be made to apply specifically to the chair of the audit committee, or whether it is sufficient to require only that at least one member of the audit committee possess such experience. The Finance Board also requests comment on whether the chair of the audit committee should be required to serve as vice-chair of the full board of directors in order to ensure that the audit committee chair has adequate incentive for effective leadership.

In addition, proposed § 917.5(c) would require that any director serving on the audit committee be sufficiently independent of the Bank and its management so as to maintain the ability to make the type of objective judgments that are required of audit committee members. The proposed independence criteria were adapted from the Blue Ribbon Committee Report, which states that ''common sense dictates that a director without any financial, family, or other material

personal ties to management is more likely to be able to evaluate objectively the propriety of management's accounting, internal control and reporting practices.'' The Finance Board agrees that the independence of the directors serving on the audit committee is of great importance. Proposed § 917.5(c) describes several examples of relationships that would call into question the independence of an audit committee member and that, therefore, would disqualify any director having such a relationship with the Bank or its management from serving on the audit committee. This list is not intended to be exhaustive, because it is impossible to foresee all potential individual circumstances that might compromise the independence of a particular director. Thus, the Finance Board expects that the board of directors will consider all potential relationships when qualifying a director for service on the audit committee.

Proposed § 917.5(d) would require that each Bank's audit committee adopt a formal written charter setting forth the scope of the audit committee's powers and responsibilities and establishing its structure, processes and membership requirements. Both the audit committee itself and the Bank's full board of directors would be required to review and assess the adequacy of and, where appropriate, amend the provisions of the audit committee charter annually and to readopt the charter, including amendments, not less often than every three years, based on the board's and audit committee's reviews of the policy. Proposed § 917.5(d)(3) would require that the audit committee charter contain the following specific provisions: (i) that the audit committee has the responsibility to select, evaluate and, where appropriate, replace the internal auditor and that the internal auditor may be removed only with the approval of the audit committee; (ii) that the internal auditor shall report directly to the audit committee on substantive matters and that the internal auditor is ultimately responsible to the audit committee and the board of directors; and (iii) that the internal and external auditors be allowed unrestricted access to the audit committee without any requirement of management knowledge or approval. Although not expressly stated in § 917.5, the audit committee would be required, under the general provisions of proposed § 917.2(c), to have the authority to use the services of Bank staff and to employ such outside experts as it deems necessary to carry out its functions. The proposed requirements pertaining to the audit committee charters were adapted from the recommendations contained in the Blue Ribbon Committee Report and the current Finance Board requirements on audit committees.

Proposed § 917.5(e) sets forth the duties of each Bank's audit committee under the new regulatory structure, including the duties to: (1) Direct senior management to maintain the reliability and integrity of the accounting policies and financial reporting and disclosure practices of the Bank; (2) review the basis for the Bank's financial statements and the external auditor's opinion rendered with respect to such financial statements and ensure that policies are in place to achieve disclosure and transparency regarding the Bank's true financial performance and governance practices; (3) oversee the internal audit function; (4) oversee the external audit function; (5) act as an independent, direct channel of communication between the Bank's board of directors and the internal and external auditors; (6) conduct or authorize investigations into any matters within the audit committee's scope of responsibilities; (7) ensure that senior management has established and is maintaining an adequate internal control system; (8) review the policies and procedures established by senior management to monitor implementation of the Bank's strategic business plan required under § 917.9 of the proposed rule; and (9) report periodically its findings to the Bank's board of directors.

Proposed § 917.5(e)(8) requires that the audit committee oversee not only financial audits but also oversee an audit of the controls in place to ensure the Bank's compliance with its strategic business plan. However, the audit committee is not required to assess the Bank's actual conformity with its strategic business plan, or the extent to which the Bank has achieved its statutory mission. Review of the strategic business plan of the Bank is the responsibility of the full board of directors, as more fully discussed in proposed § 917.9(c)(3) below.

Finally, proposed § 917.5(f) would require that each Bank's audit committee prepare written minutes of each audit committee meeting.

G. Budget Preparation—§ 917.6

Proposed § 917.6 would require that: (a) Each Bank's board of directors adopt an annual operating expense budget and a capital expenditures budget; (b) a Bank's board of directors not delegate the authority to approve the Bank's annual budgets, or any subsequent amendments thereto, to Bank officers or other Bank employees; (c) each Bank's annual budgets be prepared based upon an interest rate scenario as determined by the Bank; and (d) no Bank exceed its total annual operating expense budget or its total annual capital expenditures budget without prior approval by the Bank's board of directors of an amendment to such budget.

These provisions are carried over from existing § 934.7 of the Finance Board's regulations, which itself was recently amended by an interim final rule. *See* 64 FR 71275. As part of the Finance Board's effort to relinquish all Bank corporate governance responsibilities, the recent interim final rule deleted old paragraphs (b) through (e) of § 934.7, which had required that each Bank submit to the Finance Board certain specified budget information. In addition, the interim final rule deleted old paragraph (a)(2) of § 934.7, requiring Finance Board approval for Banks' purchase or long-term lease of buildings, because, subsequent to the enactment of the Modernization Act, such approval is no longer a statutory requirement. *See* Modernization Act at 606(d). Finally, the interim final rule redesignated remaining paragraphs (a)(1), (3), (4) and (5) as paragraphs (a), (b), (c) and (d), respectively.

The Finance Board is proposing to move the provisions of § 934.7 to part 917 because most of the material in part 934 will be deleted through the reorganization rule, and regulations governing budget reporting requirements come logically within the realm of board of directors' and senior management responsibilities.

H. Dividends—§ 917.7

Section 917.7 of the proposed rule provides that a Bank's board of directors may declare and pay a dividend only from previously retained earnings or current net earnings, as determined by the Bank, and only if such payment will not result in the impairment of the par value of the capital stock of the Bank. This language has been moved from existing § 934.17, which, itself, was recently amended in an interim final rule intended to immediately implement certain devolutionary changes required under the Modernization Act. *See* 64 FR 71275.

Before the enactment of the Modernization Act, section 16(a) of the Bank Act provided generally that dividends may be paid by the Banks out of previously retained earnings or current net earnings only with the approval of the Finance Board. *See* 12 U.S.C. 1436(a) (1999). Section 934.17 of the Finance Board's regulations formerly implemented this statutory provision by providing generally that

the board of directors of each Bank, with the approval of the Finance Board, may declare and pay a dividend from net earnings, including previously retained earnings, on the paid-in value of capital stock held during the dividend period. *See* 12 CFR 934.17 (1999). In addition, dividend payments by the Banks were formerly subject to a Finance Board Dividend Policy, *see* Finance Board Res. No. 90–38 (Mar. 15, 1990), as well as Board of Directors Resolutions approving specific Bank dividend payments, that established specific conditions for approval of such dividend payments, including that the dividend payment would not result in a projected impairment of the par value of the capital stock of the Bank.

The Modernization Act amended section 16(a) of the Bank Act by removing the requirement for Finance Board approval of Bank dividend payments. *See* Modernization Act at section 606(g)(1)(B). Accordingly, the Finance Board removed most of the specific dividend payment restrictions formerly set forth in § 934.17 and in the Dividend Policy. However, for considerations of safety and soundness, the Finance Board believes that the impairment restriction formerly imposed under the Dividend Policy should continue to apply. In addition, while the Modernization Act provided for the repeal of section 6(g) of the Bank Act (requiring that all Bank stock share in dividends without preference), section 6(g) remains in effect during a transition period until the Finance Board has adopted capital regulations and approved the capital structure plans of the Banks. *See* Modernization Act at section 608. Consequently, § 934.17 was amended to contain only the requirement that dividends be paid on all stock without preference and the impairment restriction set forth in the former Dividend Policy.

Because the reorganization rule, discussed above, will eliminate part 934 of the Finance Board's regulations and because the Finance Board wishes to retain the substance of recently-amended § 934.17 in its regulations, the agency is proposing to move this material to new part 917, given that approval of dividend payments is a responsibility of a Bank's board of directors.

I. Bank Bylaws—§ 917.8

Section 917.8 of the proposed rule would require that a Bank's board of directors have in effect at all times bylaws governing the manner in which the Bank administers its affairs and that such bylaws be consistent with applicable laws and regulations as administered by the Finance Board. The proposed rule merely moves this language from existing § 934.16, which, as is the case with the section on dividends discussed above, was recently amended in an interim final rule intended to immediately implement certain provisions of the Modernization Act. *See* 64 FR 71275.

Before the enactment of the Modernization Act, section 12(a) of the Bank Act provided that the Banks had the power, by their boards of directors, to prescribe, amend, and repeal bylaws governing the manner in which their affairs may be administered, subject to the approval of the Finance Board. *See* 12 U.S.C. 1432(a). At that time, § 934.16 of the Finance Board's regulations allowed the Banks to adopt, amend or repeal their bylaws without Finance Board approval, as long as the bylaws or amendments were consistent with applicable statutes, regulations and Finance Board policies. *See* 12 CFR 934.16.

The Modernization Act amended section 12(a) of the Bank Act by removing the requirement for Finance Board approval of Bank bylaws, provided that the bylaws are consistent with applicable laws and regulations, as administered by the Finance Board. *See* Modernization Act at section 606(d)(1)(C). In order to promote sound corporate governance practice, the Finance Board amended § 934.16 to require the Banks to have bylaws governing the manner in which the Banks' affairs are conducted. Because the reorganization rule, discussed above, will eliminate part 934 of the Finance Board's regulations, the proposed rule would move the amended language of § 934.16, to part 917, as the enactment of bylaws is a duty of each Bank's board of directors.

J. Mission of the Banks; Strategic Business Plan—§ 917.9

Proposed § 917.9 sets forth requirements that each Bank must meet in developing a strategic business plan to enumerate the Banks goals and objectives for achieving the mission of the Bank. The Bank Act establishes the Finance Board's primary responsibility for ensuring the safety and soundness of the Bank System and, consistent with that duty, ensuring that the Banks, as government-sponsored enterprises (GSEs), fulfill their public policy mission. *See* 12 U.S.C. 1422a(a)(3). As with the risk management function, a Bank's board of directors must take its strategic business planning seriously and impress the importance of implementing the plan and mission achievement upon Bank management and staff. The Banks' boards of directors must be fully engaged so that there is an appropriate focus on strategic business plan implementation and mission achievement at all levels of the Bank.

Proposed § 917.9(a) defines the mission of the Banks as providing to members and associates (*i.e.,* entities that have been approved as a nonmember mortgagee pursuant to subpart B of part 950 (currently part 935) of the Finance Board's regulations) financial products and services, including but not limited to advances (*i.e.,* correspondent services and other Bank business activities may be considered to be mission-related), that assist and enhance such members' and associates' financing of: (1) Housing, including single-family and multi-family housing serving consumers at all income levels, and (2) community lending as defined in § 953.3 (current § 970.3) of the Finance Board's regulations. This statement of mission and the related strategic business plan requirements of § 917.9 are intended to ensure maximum use of the cooperative structure of the Bank System to provide funds for housing finance and community lending.

Proposed § 917.9(b) would require that, beginning 90 days after the effective date of the provision, each Bank's board of directors have in effect at all times a strategic business plan describes how the business activities of the Bank with achieve the mission of the Bank. Specifically, the plan would be required to: (1) Enumerate the business activities that the Bank has determined are consistent with the mission of the Bank and the reasons that those activities are so designated, including how such activities assist and enhance members' and associates' business and further the cooperative nature of the Bank System; (2) enumerate operating goals and objectives for each major business activity and all new activities; and (3) describe new business activities and enhancements to existing activities. In addition, proposed § 917.9(b)(4) would require that each Bank's strategic business plan be supported by appropriate and timely research and analysis of relevant market developments and member and associate demand for Bank products and services.

The Banks already are required to prepare a ''Housing Finance and Community Development Mission Achievement Report'' (HFCDMA Report) to be reviewed by the Finance Board as part of its annual supervisory examination of each Bank. Although the HFCDMA Report addresses topics

similar to those that would be addressed in the strategic business plan, the focus of the Report is primarily retrospective, while the strategic business plan is intended to be prospective. However, to the extent that information prepared for the HFCDMA Report, or any other reports, meets the regulatory requirements for the strategic business plan, a Bank would be permitted to use this work product to satisfy the strategic business plan requirements.

As with the risk management policy, proposed § 917.9(c)(1) would require that the Bank's board of directors review the Bank's strategic business plan on at least an annual basis, while proposed § 917.9(c)(2) would require that the board amend the strategic business plan, as appropriate, based on these reviews. Proposed § 917.9(c)(3) would require a Bank's board of directors to re-adopt a strategic business plan, including interim amendments, not less often than every three years, as appropriate, based on the board's reviews of the policy. As with the similar provision in proposed § 917.3(a)(2)(iii), this requirement is intended to ensure that, even given the turnover in board personnel that will occur over a number of years, all or most current members of a Bank's board of directors will be thoroughly familiar with the Bank's strategic business plan, will have given meaningful consideration to its provisions and will have expressed their opinion regarding the adequacy of the policy through the voting process. Proposed § 917.9(c)(4) also would make clear that each Bank's board of directors has the responsibility to establish management reporting requirements and monitor implementation of the strategic business plan and the operating goals and objectives contained therein.

These provisions would require the board of directors to oversee the process of assessing the Bank's implementation of its strategic business plan, but would not require that this responsibility reside with the audit committee or the internal auditor. It is not necessary that the requirements for the audit committee, which oversees the financial audit of the Bank, be applied to the oversight of the strategic business plan. Thus, proposed § 917.9 requires that the board of directors oversee Bank implementation of the strategic business plan, but allows the board to determine how, and by what mechanism, it will carry out this responsibility. However, as previously discussed, the audit committee shall be responsible for ensuring that proper controls exist to ensure that an assessment of the Bank's implementation of its strategic business plan is carried out.

III. Regulatory Flexibility Act

The proposed rule applies only to the Banks, which do not come within the meaning of ''small entities,'' as defined in the Regulatory Flexibility Act (RFA). *See* 5 U.S.C. 601(6). Therefore, in accordance with section 605(b) of the RFA, *see id.* at 605(b), the Finance Board hereby certifies that this proposed rule, if promulgated as a final rule, will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 12 CFR Parts 917

Community development, Credit, Housing and Federal home loan banks.

Accordingly, the Finance Board hereby proposes to amend title 12, chapter IX, Code of Federal Regulations, by adding a new part 917 to read as follows:

PART 917—POWERS AND RESPONSIBILITIES OF BANK BOARDS OF DIRECTORS AND SENIOR MANAGEMENT

Sec.

917.1 Definitions.
917.2 General authorities and duties of Bank boards of directors.
917.3 Risk management.
917.4 Internal control system.
917.5 Audit committees.
917.6 Budget preparation and reporting requirements.
917.7 Dividends.
917.8 Bank bylaws.
917.9 Mission of the Banks; Strategic business plan.

Authority: 12 U.S.C. 1422a(a)(3), 1422b(a)(1), 1427, 1432(a), 1436(a), 1440.

§ 917.1 Definitions.

As used in this part:

Associate means an entity that has been approved as a nonmember mortgagee pursuant to subpart B of part 950 of this chapter.

Business risk means the risk of an adverse impact on a Bank's profitability resulting from external factors as may occur in both the short and long run.

Capital structure plan means the plan establishing and implementing a capital structure that each Bank is required to submit to the Finance Board under 12 U.S.C. 1426(b).

Community financial institution has the meaning set forth in 12 U.S.C. 1422(13).

Community lending has the meaning set forth in § 952.3 of this chapter.

Contingency liquidity means:

(1) Marketable assets with a maturity of one year or less;

(2) Self-liquidating assets with a maturity of seven days or less; and

(3) Assets that are generally accepted as collateral in the repurchase agreement market.

Credit risk means the risk that the market value of an obligation will decline as a result of deterioration in creditworthiness.

Immediate family member means a parent, sibling, spouse, child, dependent, or any relative sharing the same residence.

Internal auditor means the individual responsible for the internal audit function at the Bank.

Liquidity risk means the risk that a Bank is unable to meet its obligations as they come due or meet the credit needs of its members and eligible nonmember borrowers in a timely and cost-efficient manner.

Market risk means the risk that the market value of a Bank's portfolio will decline as a result of changes in interest rates, foreign exchange rates, equity and commodity prices.

Operations risk means the risk of an unexpected loss to a Bank resulting from human error, fraud, unenforceability of legal contracts, or deficiencies in internal controls or information systems.

§ 917.2 General authorities and duties of Bank boards of directors.

(a) *Management of the Bank.* The management of each Bank shall be vested in its board of directors. While Bank boards of directors may delegate the execution of operational functions to Bank personnel, the ultimate responsibility of each Bank's board of directors for that Bank's management is non-delegable.

(b) *Duties of Bank directors.* Each Bank director shall have the duty to:

(1) Carry out his or her duties as director in good faith, in a manner such director believes to be in the best interests of the Bank, and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances;

(2) Administer the affairs of the Bank fairly and impartially and without discrimination in favor of or against any member;

(3) Be financially literate, or become financially literate within a reasonable time after appointment or election; and

(4) Direct the operations of the Bank in conformity with the requirements set forth in the Act and this chapter.

(c) *Authority regarding staff and outside consultants.* (1) In carrying out its duties and responsibilities under the Act and this chapter, each Bank's board of directors and all committees thereof shall have authority to retain staff and

outside counsel, independent accountants, or other outside consultants at the expense of the Bank.

(2) Bank staff providing services to the board of directors or any committee of the board under paragraph (c)(1) of this section may be required by the board of directors or such committee to report directly to the board or such committee, as appropriate.

§ 917.3 Risk management.

(a) *Adoption of risk management policy.* (1) Beginning 90 days after the effective date of this section, each Bank's board of directors shall have in effect at all times a risk management policy that addresses the Bank's exposure to credit risk, market risk, liquidity risk, business risk and operations risk and that conforms to the requirements of paragraph (b) of this section and to all applicable Finance Board regulations and policies.

(2) *Review and compliance.* Each Bank's board of directors shall:

(i) Review the Bank's risk management policy at least annually;

(ii) Amend the risk management policy as appropriate;

(iii) Re-adopt the Bank's risk management policy, including interim amendments, not less often than every three years; and

(iv) Ensure that policies and procedures are in place to achieve Bank compliance at all times with the risk management policy.

(b) *Risk management policy requirements.* In addition to meeting any other requirements set forth in this chapter, each Bank's risk management policy shall:

(1) Describe how the Bank will comply with its capital structure plan, after such plan is approved by the Finance Board;

(2) Set forth the Bank's tolerance levels for the market and credit risk components; and

(3) Set forth standards for the Bank's management of each risk component, including but not limited to:

(i) Regarding credit risk arising from all secured and unsecured transactions, standards and criteria for, and timing of, periodic assessment of the creditworthiness of issuers, obligors, or other counterparties including identifying the criteria for selecting dealers, brokers and other securities firms with which the Bank may execute transactions; and

(ii) Regarding market risk, standards for the methods and models used to measure and monitor such risk;

(iii) Regarding day-to-day operational liquidity needs and contingency liquidity needs for periods during which the Bank's access to capital markets is impaired:

(A) An enumeration of specific types of investments to be held for such liquidity purposes; and

(B) The methodology to be used for determining the Bank's operational and contingency liquidity needs;

(iv) Regarding operations risk, standards for an effective internal control system, including periodic testing and reporting; and

(v) Regarding business risk, strategies for mitigating such risk, including contingency plans where appropriate.

(c) *Risk assessment.* The senior management of each Bank shall perform, at least annually, a risk assessment that identifies and evaluates all material risks, including both quantitative and qualitative aspects, that could adversely affect the achievement of the Bank's performance objectives and compliance requirements. The risk assessment shall be in written form and shall be reviewed by the Bank's board of directors promptly upon its completion.

§ 917.4 Internal control system.

(a) *Establishment and maintenance.* (1) Each Bank shall establish and maintain an effective internal control system that addresses:

(i) The efficiency and effectiveness of Bank activities;

(ii) The safeguarding of Bank assets;

(iii) The reliability, completeness and timely reporting of financial and management information and transparency of such information to the Bank's board of directors and to the Finance Board; and

(iv) Compliance with applicable laws, regulations, policies, supervisory determinations and directives of the Bank's board of directors and senior management.

(2) Ongoing internal control activities necessary to maintain the internal control system required under paragraph (a)(1) of this section shall include, but are not limited to:

(i) Top level reviews by the Bank's board of directors and senior management, including review of financial presentations and performance reports;

(ii) Activity controls, including review of standard performance and exception reports by department-level management on an appropriate periodic basis;

(iii) Physical and procedural controls to safeguard, and prevent the unauthorized use of, assets;

(iv) Monitoring for compliance with the risk tolerance limits set forth in the Bank's risk management policy;

(v) Any required approvals and authorizations for specific activities; and

(vi) Any required verifications and reconciliations for specific activities.

(b) *Internal control responsibilities of Banks' boards of directors.* Each Bank's board of directors shall ensure that the internal control system required under paragraph (a)(1) of this section is established and maintained, and shall oversee senior management's implementation of such a system on an ongoing basis, by:

(1) Conducting periodic discussions with senior management regarding the effectiveness of the internal control system;

(2) Ensuring that an effective and comprehensive internal audit of the internal control system is performed annually;

(3) Requiring that internal control deficiencies be reported to the Bank's board of directors in a timely manner and that such deficiencies are addressed promptly;

(4) Conducting a timely review of evaluations of the effectiveness of the internal control system made by internal auditors, external auditors and Finance Board examiners;

(5) Directing senior management to address promptly and effectively recommendations and concerns expressed by internal auditors, external auditors and Finance Board examiners regarding weaknesses in the internal control system;

(6) Reporting any internal control deficiencies found, and the corrective action taken, to the Finance Board in a timely manner;

(7) Establishing, documenting and communicating an organizational structure that clearly shows lines of authority within the Bank, provides for effective communication throughout the Bank, and ensures that there are no gaps in the lines of authority;

(8) Reviewing all delegations of authority to specific personnel or committees and requiring that such delegations state the extent of the authority and responsibilities delegated; and

(9) Establishing reporting requirements, including specifying the nature and frequency of reports it receives.

(c) *Internal control responsibilities of Banks' senior management.* Each Bank's senior management shall be responsible for carrying out the directives of the Bank's board of directors, including the establishment, implementation and maintenance of the internal control system required under paragraph (a)(1) of this section, by:

(1) Establishing, implementing and effectively communicating to Bank personnel policies and procedures that are adequate to ensure that internal control activities necessary to maintain an effective internal control system, including the activities enumerated in paragraph (a)(2) of this section, are an integral part of the daily functions of all Bank personnel;

(2) Ensuring that all Bank personnel fully understand and comply with all policies, procedures and legal requirements;

(3) Ensuring that there is appropriate segregation of duties among Bank personnel and that personnel are not assigned conflicting responsibilities;

(4) Establishing effective paths of communication upward, downward and across the organization in order to ensure that Bank personnel receive necessary and appropriate information, including:

(i) Information relating to the operational policies and procedures of the Bank;

(ii) Information relating to the actual operational performance of the Bank;

(iii) Adequate and comprehensive internal financial, operational and compliance data; and

(iv) External market information about events and conditions that are relevant to decision making;

(5) Developing and implementing procedures that translate the major business strategies and policies established by the Bank's board of directors into operating standards;

(6) Ensuring adherence to the lines of authority and responsibility established by the Bank's board of directors;

(7) Overseeing the implementation and maintenance of management information and other systems;

(8) Establishing and implementing an effective system to track internal control weaknesses and the actions taken to correct them; and

(9) Monitoring and reporting to the Bank's board of directors the effectiveness of the internal control system on an ongoing basis.

§ 917.5 Audit committees.

(a) *Establishment.* The board of directors of each Bank shall establish an audit committee, consistent with the requirements set forth in this section.

(b) *Composition.* (1) The audit committee shall comprise five or more persons drawn from the Bank's board of directors, each of whom shall meet the criteria of independence set forth in paragraph (c) of this section.

(2) The audit committee shall include a balance of representatives of:

(i) Community financial institutions and other members; and

(ii) Appointive and elective directors of the Bank.

(3) The terms of audit committee members shall be appropriately staggered so as to provide for continuity of service.

(4) At least one member of the audit committee shall have extensive accounting or related financial management experience.

(c) *Independence.* Any member of the Bank's board of directors shall be considered to be sufficiently independent to serve as a member of the audit committee if that director does not have a disqualifying relationship with the Bank or its management that would interfere with the exercise of that director's independent judgment. Such disqualifying relationships include, but are not limited to:

(1) Being employed by the Bank in the current year or any of the past five years;

(2) Accepting any compensation from the Bank other than compensation for service as a board director;

(3) Serving or having served in any of the past five years as a consultant, advisor, promoter, underwriter, or legal counsel of or to the Bank; or

(4) Being an immediate family member of an individual who is, or has been in any of the past five years, employed by the Bank.

(d) *Charter.* (1) The audit committee of each Bank shall adopt, and the Bank's board of directors shall approve, a formal written charter that specifies the scope of the audit committee's powers and responsibilities, as well as the audit committee's structure, processes and membership requirements.

(2) The audit committee and the board of directors of each Bank shall:

(i) Review, assess the adequacy of and, where appropriate, amend the Bank's audit committee charter on an annual basis;

(ii) Amend the audit committee charter as appropriate; and

(iii) Re-adopt and re-approve, respectively, the Bank's audit committee charter not less often than every three years.

(3) Each Bank's audit committee charter shall:

(i) Provide that the audit committee has the responsibility to select, evaluate and, where appropriate, replace the internal auditor and that the internal auditor may be removed only with the approval of the audit committee;

(ii) Provide that the internal auditor shall report directly to the audit committee on substantive matters and that the internal auditor is ultimately accountable to the audit committee and board of directors; and

(iii) Provide that both the internal auditor and the external auditor shall have unrestricted access to the audit committee without the need for any prior management knowledge or approval.

(e) *Duties.* Each Bank's audit committee shall have the duty to:

(1) Direct senior management to maintain the reliability and integrity of the accounting policies and financial reporting and disclosure practices of the Bank;

(2) Review the basis for the Bank's financial statements and the external auditor's opinion rendered with respect to such financial statements (including the nature and extent of any significant changes in accounting principles or the application therein) and ensure that policies are in place to achieve disclosure and transparency regarding the Bank's true financial performance and governance practices;

(3) Oversee the internal audit function by:

(i) Reviewing the scope of audit services required, significant accounting policies, significant risks and exposures, audit activities and audit findings;

(ii) Assessing the performance and determining the compensation of the internal auditor; and

(iii) Reviewing and approving the internal auditor's work plan;

(4) Oversee the external audit function by:

(i) Approving the external auditor's annual engagement letter;

(ii) Reviewing the performance of the external auditor; and

(iii) Making recommendations to the Bank's board of directors regarding the appointment, renewal, or termination of the external auditor;

(5) Provide an independent, direct channel of communication between the Bank's board of directors and the internal and external auditors;

(6) Conduct or authorize investigations into any matters within the audit committee's scope of responsibilities;

(7) Ensure that senior management has established and is maintaining an adequate internal control system within the Bank by:

(i) Reviewing the Bank's internal control system and the resolution of identified material weaknesses and reportable conditions in the internal control system, including the prevention or detection of management override or compromise of the internal control system; and

(ii) Reviewing the programs and policies of the Bank designed to ensure compliance with applicable laws, regulations and policies and monitoring the results of these compliance efforts;

(8) Reviewing the policies and procedures established by senior management to assess and monitor implementation of with the Bank's strategic business plan and the operating goals and objectives contained therein; and (9) Report periodically its findings to the Bank's board of directors.

(f) *Meetings.* The audit committee shall prepare written minutes of each audit committee meeting.

§ 917.6 Budget preparation and reporting requirements.

(a) *Adoption of budgets.* Each Bank's board of directors shall be responsible for the adoption of an annual operating expense budget and a capital expenditures budget for the Bank, and any subsequent amendments thereto, consistent with the requirements of the Act, this section, other regulations and policies of the Finance Board, and with the Bank's responsibility to protect both its members and the public interest by keeping its costs to an efficient and effective minimum.

(b) *No delegation of budget authority.* A Bank's board of directors may not delegate the authority to approve the Bank's annual budgets, or any subsequent amendments thereto, to Bank officers or other Bank employees.

(c) *Interest rate scenario.* A Bank's annual budgets shall be prepared based upon an interest rate scenario as determined by the Bank.

(d) *Board approval for deviations.* A Bank may not exceed its total annual operating expense budget or its total annual capital expenditures budget without prior approval by the Bank's board of directors of an amendment to such budget.

§ 917.7 Dividends.

A Bank's board of directors may declare and pay a dividend only from previously retained earnings or current net earnings and only if such payment will not result in a projected impairment of the par value of the capital stock of the Bank. Dividends on such capital stock shall be computed without preference.

§ 917.8 Bank bylaws.

A Bank's board of directors shall have in effect at all times bylaws governing the manner in which the Bank administers its affairs and such bylaws shall be consistent with applicable laws and regulations as administered by the Finance Board.

§ 917.9 Mission of the Banks; Strategic business plan.

(a) *Mission of the Banks.* The mission of the Banks is to provide to its members and associates financial products and services, including but not limited to advances, that assist and enhance such members' and associates' financing of:

(1) Housing, including single-family and multi-family housing serving consumers at all income levels; and

(2) Community lending.

(b) *Adoption of strategic business plan.* Beginning 90 days after the effective date of this section, each Bank's board of directors shall have in effect at all times a strategic business plan that describes how the business activities of the Bank will achieve the mission of the Bank as set forth in paragraph (a) of this section. Specifically, each Bank's strategic business plan shall:

(1) Enumerate those business activities of the Bank that the board of directors has determined are consistent with the mission of the Banks as set forth in paragraph (a) of this section and the reasons that those activities are so designated, including how such activities assist and enhance members' and associates' business and further the cooperative nature of the Bank System;

(2) Enumerate operating goals and objectives for each major business activity and for all new business activities and the strategies for meeting such goals and objectives;

(3) Describe any proposed new business activities or enhancements of existing activities; and

(4) Be supported by appropriate and timely research and analysis of relevant market developments and member and associate demand for Bank products and services.

(c) *Review and monitoring.* Each Bank's board of directors shall:

(1) Review the Bank's strategic business plan at least annually;

(2) Amend the strategic business plan as appropriate;

(3) Re-adopt the Bank's strategic business plan, including interim amendments, not less often than every three years; and

(4) Establish management reporting requirements and monitor implementation of the strategic business plan and the operating goals and objectives contained therein.

Dated: December 14, 1999.

By the Board of Directors of the Federal Housing Finance Board.

Bruce A. Morrison,

Chairman.

[FR Doc. 99–34037 Filed 12–30–99; 8:45 am]

BILLING CODE 6725–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–304–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Airbus Model A300 series airplanes. This proposal would require a one-time detailed visual inspection to detect corrosion on the outer surface of the fuselage skin panel; application of corrosion preventive protection; and corrective action, if necessary. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to detect and correct corrosion of the fuselage skin panel, which could result in cracking and consequent reduced structural integrity of the airplane.

DATES: Comments must be received by February 2, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–304–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 99–NM–304–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–304–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Generale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Airbus Model A300 series airplanes. The DGAC advises that several cases of corrosion have been reported on the outer surface of the fuselage skin panel between fuselage frames 39 and 40, and between stringers 27 and 33. Cracking on the fuselage skin panels and associated stiffeners has also been detected, resulting from the adverse effects of stress corrosion. Such corrosion and cracking, if not corrected, could result in reduced structural integrity of the airplane.

Explanation of Relevant Service Information

Airbus has issued Service Bulletin A300–53–0328, dated March 5, 1999, which describes procedures for inspection for corrosion; application of corrosion preventive protection to delay the occurrence of corrosion; and repair if correction is detected. The service bulletin describes several repair methods, including rework of corroded areas, repair of panels still within permitted limits, or replacement of panels outside permitted limits, depending on the severity of the corrosion. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The DGAC classified this service bulletin as mandatory and issued French airworthiness directive 1999–209–281(B), dated May 19, 1999, in order to ensure the continued airworthiness of these airplanes in France.

FAA's Conclusions

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously, except as described below.

Differences Between Proposed Rule and Service Bulletin

Operators should note that, although the service bulletin specifies that the manufacturer may be contacted for disposition of certain repair conditions, this proposal would require replacement of the skin panel to be accomplished in accordance with the service bulletin.

Cost Impact

The FAA estimates that 3 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 4 or 22 work hours per airplane, depending on the airplane configuration, to accomplish the proposed inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be between $240 or $1,320 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus Industrie: Docket 99–NM–304–AD.

Applicability: Model A300 series airplanes, certificated in any category; except those on which Airbus Modification 04201 has been accomplished.

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

Compliance: Required as indicated, unless accomplished previously.

To detect and correct corrosion of the fuselage skin panel, which could result in cracking and consequent reduced structural integrity of the airplane, accomplish the following:

Inspection

(a) Perform a one-time detailed visual inspection of the outer surface of the fuselage skin panel between fuselage frames FR39 and FR40, and between stringers 27 and 33, for corrosion; in accordance with Airbus Service Bulletin A300–53–0328, dated March 5, 1999. Perform the inspection at the applicable time specified in paragraph (a)(1), (a)(2), or (a)(3) of this AD. If any corrosion is found, prior to further flight, repair (*i.e.,* rework corroded areas, or repair or replace panels, as applicable) in accordance with the service bulletin, except as provided by paragraph (b) of this AD. Temporary repairs must be replaced with permanent repairs prior to accumulation of the life limits specified in the service bulletin.

(1) For airplanes for which the date of manufacture was less than 15 years before the effective date of this AD: Inspect within 18 months after the effective date of this AD.

(2) For airplanes for which the date of manufacture was at least 15 but less than 20 years before the effective date of this AD: Inspect within 12 months after the effective date of this AD.

(3) For airplanes for which the date of manufacture was 20 or more years before the effective date of this AD: Inspect within 6 months after the effective date of this AD.

Note 2: For the purposes of this AD, a detailed visual inspection is defined as: ''An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required.''

(b) Where Airbus Service Bulletin A300–53–0328, dated March 5, 1999, specifies that Airbus may be contacted for a repair, prior to further flight, replace the skin panel with a new or serviceable skin panel in accordance with the service bulletin.

Alternative Methods of Compliance

(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, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

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

Note 4: The subject of this AD is addressed in French airworthiness directive 1999–209–281(B), dated May 19, 1999.

Issued in Renton, Washington, on December 27, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–34032 Filed 12–30–99; 8:45 am]

BILLING CODE 4910–13–P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1700

Household Products Containing Hydrocarbons

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Consumer Product Safety Commission (''CPSC'' or ''Commission'') has reason to believe that child-resistant packaging may be needed to protect children from serious illness or injury from products that contain low-viscosity hydrocarbons. This notice of proposed rulemaking (''NPR'') proposes a rule under the Poison Prevention Packaging Act (''PPPA'') that would require child-resistant packaging for many products that contain low-viscosity hydrocarbons. The Commission solicits written comments from interested persons.

DATES: The Commission must receive any comments in response to this notice by March 20, 2000.

ADDRESSES: Comments should be mailed, preferably in five copies, 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 20814; telephone (301) 504–0800. Comments also may be filed by telefacsimile to (301)504–0127 or by email to cpsc-os@cpsc.gov. Comments should be captioned ''NPR for Hydrocarbons.''

FOR FURTHER INFORMATION CONTACT: Suzanne Barone, Directorate for Epidemiology and Health Sciences, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0477, ext. 1196.

SUPPLEMENTARY INFORMATION:

A. Background

The Poison Prevention Packaging Act (''PPPA''), 15 U.S.C. 1471–1476, authorizes the U.S. Consumer Product Safety Commission (''CPSC'') to require child-resistant packaging of hazardous household substances in appropriate cases. This notice proposes to require child-resistant packaging for certain low-viscosity hydrocarbon products. [1]

Direct aspiration into the lung, or aspiration during vomiting, of small amounts of petroleum distillates and other similar hydrocarbon solvents can result in chemical pneumonia, pulmonary damage, and death. Except in specific instances, the current regulations do not require that these solvents be in child-resistant packaging. However, these chemicals are the primary ingredients in many different consumer products to which children have access.

The viscosity of a hydrocarbon-containing product contributes to its potential toxicity. Viscosity is the measurement of the ability of liquid to flow. Liquids with high viscosities are thick or ''syrupy,'' and liquids with low viscosities are more ''watery.'' Products with low viscosity pose a greater risk of aspiration into the lungs.

Under regulations issued under the Federal Hazardous Substances Act (''FHSA''), the CPSC regulates the *labeling* of hazardous household substances containing 10 percent or more by weight petroleum distillates because these products may cause injury or illness if ingested. 16 CFR 1500.14. The PPPA regulations also require child-resistant packaging for some household products containing

[1] Statements by the Commissioners concerning this action are available from the Office of the Secretary.

petroleum distillates. 16 CFR 1700.14. Under these PPPA regulations, certain consumer products containing 10 percent or more by weight of petroleum distillates, and having viscosities less than 100 Saybolt Universal Seconds (SUS) at 100°F, are subject to child-resistant packaging standards. These PPPA-regulated products include prepackaged liquid kindling and illuminating preparations (*e.g.,* lighter fluid) (16 CFR 1700.14(a)(7)), prepackaged solvents for paint or other similar surface-coating materials (*e.g.,* paint thinners) (16 CFR 1700.14(a)(15)), and nonemulsion liquid furniture polish (16 CFR 1700.14(a)(2)).

Because hydrocarbons are not now regulated under the PPPA as a chemical class, many hydrocarbon-based consumer products are not required to be in child-resistant packaging. For example, cleaning solvents, automotive chemicals, shoe-care products, and cosmetics may contain large amounts of various hydrocarbons and are not required to be in child-resistant packaging. The existing child-resistant packaging standard requires child-resistant packaging of prepackaged kerosene for use as lamp fuel; however, a gun cleaning solvent that contains over 90 percent kerosene does not have to meet this requirement. Mineral spirits used as a paint solvent require child-resistant packaging, but spot removers containing 75 percent mineral spirits, and water repellents containing 95 percent mineral spirits, do not.

On February 26, 1997, the CPSC issued an advance notice of proposed rulemaking (''ANPR'') to request comments and information about whether to require child-resistant packaging of hazardous household products that contain petroleum distillates and other hydrocarbons. 62 FR 8659. In addition to protecting children from serious injury, a rule requiring all hazardous products containing hydrocarbons to be subject to a child-resistant packaging standard would create a more consistent and comprehensive regulatory approach to child-resistant packaging for these products.

In the ANPR, the Commission solicited information on four specific issues: (1) The appropriate viscosity and/or percentage composition to be used as a threshold for requiring products that contain petroleum distillates to be in child-resistant packaging, (2) the inclusion of aerosol products in a requirement for the child-resistant packaging of products containing petroleum distillates or other hydrocarbons, (3) the scope of a rule to extend beyond petroleum distillates to include other hydrocarbons, such as benzene, toluene, xylene, pine oil, and limonene, and (4) the inclusion of restricted flow as an additional requirement for certain products, which would restrict the amount of product dispensed from an opened package during each attempt.

The Commission also solicited information on products that may be affected by such a rule, including chemical properties, users and use patterns, current packaging and labeling, economic information, and incident reports. The Commission extended the comment period until September 1, 1997, at the request of the Chemical Specialty Manufacturers Association (''CSMA'') and the Cosmetic, Toiletry, and Fragrance Association (''CTFA''). 62 FR 22897 (April 28, 1997); 62 FR 38948 (July 21, 1997).

Staff also sent copies of the ANPR to 9 trade associations (representing over 1300 small and large companies) and to over 200 individual manufacturers of household products that may contain hydrocarbons.

B. The Scope of the Proposed Regulation

After reviewing the comments submitted in response to the ANPR, the Commission decided to propose a broad PPPA rule for household products that contain chemicals capable of causing chemical pneumonia and death following aspiration. The remainder of this Section B describes the scope and form of the proposed rule. Additional discussion of the rationale for these decisions is in later sections of this notice.

The proposed rule applies to prepackaged nonemulsion-type liquid household chemical products, including drugs and cosmetics, that contain 10 percent or more hydrocarbons by weight and have a viscosity of less than 100 SUS at 100°F. Hydrocarbons are defined as compounds that consist solely of carbon and hydrogen. For products that contain multiple hydrocarbons, the total percentage of hydrocarbon in the product is calculated by adding the percentage by weight of the individual hydrocarbon components.

The definition of what is a ''household substance'' that can be regulated under the PPPA includes both a ''hazardous substance'' as defined in the FHSA and a ''food, drug, or cosmetic'' as those terms are defined in the Federal Food, Drug, and Cosmetic Act (''FDCA'').[2] The enforcement of the PPPA with respect to hazardous substances relies on the misbranding and prohibited acts sections of the FHSA. The enforcement of child-resistant packaging requirements applicable to foods, drugs, or cosmetics relies on comparable provisions of the FDCA. Therefore, the Commission is issuing two separate rules, one for hazardous substances and one for drugs and cosmetics, to more closely associate a particular rule with the applicable enforcement mechanism. (Foods also are not covered under the proposed rule, because there are no data indicating a need for child-resistant packaging of food products.)

On November 19, 1998, the staff met with interested trade associations to discuss the scope of the potential rule. The emphasis of the meeting was to obtain information on various products or packaging types that should be included or excluded from the rule (Meeting log, December 3, 1998). Several trade associations submitted comments in response to the meeting. After considering these and the other comments, the Commission decided to exclude from the proposed rule products that do not present the risk of aspiration because of the way the product is dispensed. For example, aerosol products (*i.e.,* pressurized spray containers) that expel the product in a mist do not pose the risk of aspiration. The Commission also excluded products packaged in mechanical pumps and trigger sprayers that expel product in a mist, provided that the spray mechanism is either permanently attached to the bottle or has a child-resistant attachment. This makes the misted pump or trigger sprayer package equivalent to an aerosol can. If the aerosol can, mechanical pump, or trigger sprayer expels product in a stream (either solely or as an option), the spray mechanism and the means for affixing it to the reservoir container must be child-resistant. Aerosols and permanently affixed pumps or triggers may use a child-resistant overcap in lieu of a child-resistant actuating mechanism. Also, aerosol products that form a stream only when an extension

[2] A third category of products is included in the PPPA's definition of ''household substance.'' This is ''a substance intended for use as fuel when stored in a portable container and used in the heating, cooking, or refrigeration system of a house.'' 15 U.S.C. 1471(2)(C). These fuels are not subject to the proposed rule because there is no reason to believe there is a need for child-resistant packaging of such products. (The Commission believes that products such as cans of kerosene sold to consumers likely are not ''fuel * * * used in the heating * * * system of a house,'' even though some kerosene is used in portable heaters that may be used to heat a house. However, the Commission concludes that such products are ''hazardous substance[s]'' as defined in the FHSA.)

tube is inserted into the nozzle would be excluded from the packaging requirements if, without the tube, the product is expelled as a mist.

The FHSA regulation partially exempts small packages, minor hazards, and special circumstances from the FHSA's labeling requirements. 16 CFR 1500.83(a). Writing markers and ballpoint pens are exempt from full cautionary labeling requirements relating to toxicity if they meet certain specifications listed in the regulations. These products are also excluded from the proposed child-resistant packaging requirements due to the difficulty a child would have obtaining a toxic amount of fluid from these types of products. For the same reason, products that are packaged so their contents are not free-flowing, such as some battery terminal cleaners, paint markers, and make-up removal pads, are excluded from the proposed child-resistant packaging requirements.

The following section describes some of the products that may be subject to a child-resistant packaging standard if the proposed rule is ultimately issued.

C. Products That May Be Subject to the Proposed Rule

The proposed standard includes all household products as defined in the PPPA, unless exempted, that contain 10 percent or more hydrocarbons by weight and have a viscosity of less than 100 SUS at 100° F. This would impact many different classes of products that currently do not require child-resistant packaging. However, not all of the products within each category would require child-resistant packaging under the proposed rule, because many of those products do not meet the specified composition and viscosity criteria.

The staff identified several different automotive products that would require child-resistant packaging under the proposed rule. These products include carburetor cleaners, fuel injection cleaners, and some gasoline additives. Many of these products are intended for single use, and some are already in child-resistant packaging. Automotive lubricants, including motor oil and spray lubricants, for the most part will not be included in a proposed rule because motor oils have high viscosities and aerosols that expel the product as a mist are excluded from the proposed rule.

Other household chemicals subject to the proposed rule include spot removers and water repellents. Several of the spot removers that the staff identified were already in child-resistant packaging. However, the water repellents, especially those made for shoe care, are not. Cleaning products, including some floor and metal cleaners, would also be impacted by the proposed rule. Some miscellaneous sports-related products, including gun cleaners and archery arrow feather water repellents, contain hydrocarbons but were not in child-resistant packaging. Most writing instruments, including all markers and pens, are exempt from the proposed rule because they do not expel free-flowing hydrocarbons.

The current PPPA regulation requires child-resistant packaging of solvents for paint and other surface coatings, but child-resistant packaging of paint and varnishes themselves is not currently required. Most paints would not be included in the proposed rule because they contain insufficient hydrocarbons or are too viscous. However, some sealers, non-water-based varnishes, and stains may be covered. As discussed above, aerosol spray paints are not included in the proposed rule.

There are several categories of cosmetics that would be included in the proposed rule. In general, creams and lotions are not subject to the rule because they are either too viscous or are emulsions. Most baby oils, excluding lotions and gels, would be included in the proposal. The inclusion of other cosmetic products depends on their viscosities. Because of their composition and viscosities, some bath and suntan oils would be subject to the proposed rule, while others would not. Make-up removers and nail/cuticle conditioners may or may not require child-resistant packaging depending on hydrocarbon content, viscosity, and product form. Wipes and saturated pads are exempt.

These are the major product groups that have been identified. There may be other individual products that would require child-resistant packaging that have not been identified either by the staff or the comments on the ANPR.

The following section addresses the comments on the ANPR and further discusses the rationale for the scope of this rule.

D. The Commission's Response to Comments on the ANPR

The ANPR was sent to 221 trade associations and businesses believed to be involved with petroleum-distillate-containing products. Thirty individuals and groups submitted comments. Four commenters (comments numbered CP97–2–3, –11, –12, –18) supported the rule. Most of the other comments focused on which products should or should not be subject to such a rule.

1. *The scope of the rule.*

(a) *Aerosols. Comment:* Should a child-resistant packaging standard for low-viscosity petroleum distillates include aerosol products?

Response: There is insufficient evidence to demonstrate that there is a serious aspiration hazard from self-pressurized aerosols or spray mists that contain petroleum distillates. The commenters cited the results of animal studies conducted in the 1960's. The staff is not aware of new animal or human experience data that would change the conclusions that misted aerosols sprayed into the mouth do not pool in the mouth to result in aspiration. Accordingly, hydrocarbon-containing products in pressurized containers, that are expelled as a mist, are exempt from the proposed child-resistant packaging requirements.

Under the FHSA, special labeling related to toxicity is required for products containing 10 percent or more by weight of toluene, xylene, and petroleum distillates that may be aspirated into the lungs and result in chemical pneumonitis and death. For aerosol products, this special labeling under 16 CFR 1500.14(b)(3) related to the ingestion of hydrocarbon-containing products is required only when the contents are expelled as a stream. The industry requested that all hydrocarbon-containing aerosols be exempted from the child-resistant packaging requirements. However, a large volume delivered directly into the mouth could result in aspiration. Therefore, self-pressurized packages of hydrocarbon-containing products that can be dispensed in a coherent stream would be subject to the proposed child-resistant packaging requirements. Aerosol products that form a stream only when an extension tube is inserted into the nozzle would be excluded from the packaging requirements if, without the tube, the product is expelled as a mist. The CPSC laboratory staff determined that these products can be expelled through the extension tube at a rate of 1–2 ml/sec (Cobb, March 8, 1999). However, it is unlikely that a 2- or 3-year-old child would obtain a sufficient amount of fluid via this route to cause an aspiration hazard.

(b) *Viscosity. Issue:* What is the appropriate viscosity for requiring child-resistant packaging of products that contain hydrocarbons?

Response: After reviewing the submitted data and comments pertaining to viscosity, the Commission determined that the viscosity level where child-resistant packaging is not needed to protect children should remain at or above 100 SUS at 100° F. This is the viscosity below which the

FHSA regulations require precautionary labeling for ingestion of petroleum distillate-containing products and the PPPA regulations require child-resistant packaging of three product categories (furniture polish, paint solvents, and kindling and illuminating products).

Commenters and the medical literature agree that lower viscosities are associated with a greater risk of aspiration; however, there is no agreement about defining a ''safe'' upper level for viscosity. One published review article suggests that products with viscosities of 60 SUS or greater have low aspiration potential (Litovitz and Greene, 1988). Another recent review article recommends that only products with viscosities of less than 73.4 SUS require labels warning about the hazard of aspiration (Craan, 1996).

A draft revision to the Canadian Consumer Chemicals and Containers Regulations (CCCR) adopts 73.4 SUS and below for child-resistant packaging and cautionary labeling requirements. The current Canadian labeling and packaging requirements (CP97–2–23) use 70 SUS as the upper level.

There are concerns about this level because aspirations and resulting serious injury or death from pneumonitis and lipoid pneumonia have been documented with mineral oil-based products such as baby oil (Reyes De La Rocha et al, 1985, Perrot et al, 1992, IDI 97030HCC9033). These products have viscosities in the 60–75 SUS range.

Another comment asserted that the appropriate upper level based on the animal studies by Gerarde in the 1960's was 81 SUS (Klein, July 16, 1998, Gerarde, 1963). However, this level is too low, since it is at or close to the viscosity associated with aspiration of products that resulted in deaths and serious injuries. Therefore, the proposal includes products with viscosity levels less than 100 SUS at 100°F within the child-resistant packaging standard.

This would expand the current child-resistant packaging requirements from those limited to furniture polish, kindling and illuminating fluids, and paint solvents to include other product categories with similar ingredients and viscosities.

(c) *Hydrocarbons other than petroleum distillates. Issue.* Should a child-resistant packaging requirement include products that contain hydrocarbons other than petroleum distillates?

Response: Comments for and against including hydrocarbons other than petroleum distillates were received. Some commenters wanted to limit the rule to petroleum distillates. Other commenters suggested that compounds with the same risk of aspiration should be regulated regardless of their source. The Commission's decision falls between these two suggestions. The proposed rule includes products with solvents containing only hydrogen and carbon, commonly known as ''hydrocarbons.'' The term ''petroleum distillate'' is archaic and refers to mixtures of hydrocarbons that are distilled from petroleum. There has been confusion about ''petroleum distillates,'' especially regarding the aromatic hydrocarbons benzene, xylene, and toluene. The aromatics are components of some of the distillation fractions. However, the aromatics are not universally considered to be petroleum distillates because the toxicity of aromatics differs from the aliphatic chemicals. The Canadian standards currently do not include the aromatic hydrocarbons in their definition of petroleum distillates for cautionary labeling and child-resistant packaging (CP97–2–23).

In order for the proposed rule to be definite and comprehensive, the Commission proposes to not use the term ''petroleum distillate'' to define the scope of the rule. Instead the rule applies to those chemicals that contain only hydrogen and carbon. This will minimize confusion by making it clear that the aromatic hydrocarbons are intended to be included in a child-resistant packaging requirement. However, this does not change the FHSA's specific labeling requirements for the aromatic hydrocarbons. The Canadians have taken a similar approach. A draft revision to the Canadian standard eliminates the term ''petroleum distillate'' and lists chemical structures and classes to clarify what is included in the regulations.

Using the term hydrocarbon clarifies that the rulemaking will not be limited to petroleum-derived chemicals. It also eliminates one commenter's concern about confusion over whether the chemical limonene includes several different compounds. The recommended rule does not name individual compounds. Whether a product would require child-resistant packaging would depend on the total amount of hydrocarbon (by weight) and the product's viscosity.

The draft standard in Canada extends the requirements for labeling and packaging of aspiration hazards to include certain alcohols and ketones. The CPSC did not expand this rulemaking to include non-hydrocarbon chemicals, such as terpene alcohols, ketones, or alcohols, because of the diverse chemistry, toxicity, and uses of these chemicals. These non-hydrocarbon chemical classes should be evaluated separately for the need for child-resistant packaging.

(2) *Restricted flow.*

Issue: Should restricted flow be an additional requirement for certain products?

Response: Restricted flow is defined in 16 CFR 1700.15(d) as ''* * * the flow of liquid is so restricted that not more than 2 milliliters of the contents can be obtained when the inverted, opened container is shaken or squeezed once or when the container is otherwise activated once.'' Restricted flow is required in addition to child-resistant packaging for liquid furniture polish because many ingestions occurred while the product was in use and the top was already off. 16 CFR 1700.14(a)(2).

Restricted flow alone is not adequate to protect children, however. It does not prevent the child from directly accessing the product if the package is not child-resistant. Although restricted flow limits the amount of product a child can obtain each time the child attempts to ingest the product from the container, it does not limit the number of attempts the child may make.

None of the commenters identified a product class as needing restricted flow in addition to child-resistant packaging. Several commenters mentioned that restricted flow would impede the use of products where greater volumes are necessary for use. These commenters did not identify specific products.

A commenter requested that restricted flow be an alternative to child-resistant packaging for cosmetic products such as baby, body, and bath oils. The commenter stated that older adults might have difficulty opening the child-resistant packaging with hands wet from the bath or shower. The commenter stated that many of these products already had restricted flow.

The CPSC staff examined some cosmetic products with restricted orifices. None of these products met the PPPA's regulatory definition of restricted flow. The PPPA test procedures use adults aged 50 to 70 to determine adult-use-effectiveness for most packaging. This has led to the development of packaging systems that are easier for all adults to use properly (including resecuring the cap).

Furthermore, the rationale for restricted flow with furniture polish is that children would have access to the bottle *during* its use, in addition to when it was in storage. Therefore, the restricted-flow requirement is in addition to, not in lieu of, child-resistant packaging.

The Commission has not identified any specific product or product category where restricted flow would add additional protection to children. Therefore, the Commission is not requiring restricted flow for additional product categories. The requirement for restricted flow of liquid furniture polish currently in the PPPA regulations will remain.

(3) *Injury data.*

Comment: Several commenters (CP97–2–6, –15, –19–21) stated that the number of incidents and deaths were low and that child-resistant packaging was not justified.

Response: The CPSC believes that child-resistant packaging regulations should not be based solely on the number of incidents known to have occurred in the past. Before issuing a regulation under the PPPA, the Commission must find that ''the degree or nature of the hazard to children in the availability of hydrocarbons, by reason of its packaging, is such that special packaging is required to protect children from serious personal injury or serious illness resulting from handling, using, or ingesting such substance.'' 15 U.S.C. 1472(a)(1).

The ANPR presented ingestion data from various sources, including the CPSC's National Electronic Injury Surveillance System (''NEISS'') and the Toxic Exposure Surveillance System (''TESS'') maintained by the American Association of Poison Control Centers (''AAPCC''). The staff collected additional information on the NEISS cases where possible. The data collection was limited to product categories that may contain petroleum distillates and that are not currently required to be in child-resistant packaging. From these data, it can be shown that children do gain access to the categories of products that include some products that contain hydrocarbons.

The potential for aspiration and serious injury from these chemicals is well documented. Each time a child gains access to one of these products that is not in child-resistant packaging, there is the potential for ingestion, aspiration, pneumonitis, and death. Therefore, the Commission is proposing to require child-resistant packaging to protect children from accessing these products.

(4) *Packaging.*

(a) *Exempt aerosols. Comment:* One commenter (CP97–2–20 and 20a) stated that there are no currently available child-resistant/senior-friendly overcaps for aerosols. The commenter requested that the rule be clarified to say that aerosols are exempt from the senior-friendly requirements.

Response: The PPPA regulations exempt from the senior-friendly portion of the PPPA's requirements products that must be in aerosol form and products that require metal containers with reclosable metal closures. 16 CFR 1700.15(b)(2)(ii)(A). It is unnecessary to repeat this exemption specifically in a rule for hydrocarbon-containing products. However, the staff is aware of several child-resistant overcap designs that meet the senior-friendly requirements. The Commission will consider revisiting this issue in the future, but it is outside the scope of this rulemaking.

(b) *Exempt single-use products with heat seals. Comment:* Several commenters (CP97–2–20a and 7) requested that single use products with heat seals be exempted from the requirements.

Response: Any regulated product that is intended and likely to be fully used in a single application must meet the child-resistance and adult-use-effectiveness specifications for only the first opening, since a toxic amount of the product will not remain after the product is opened and used. The manufacturer may use any packaging option that meets the PPPA requirements for the first opening. The CPSC has no data from tests of packages with thermal foil seals.

(5) *Miscellaneous.*

(a) *Education campaign. Comment:* The CSMA and several of its members (CP97–2–20, –15) requested that CPSC work with them and others on an education campaign to encourage consumers to read product labels and follow the directions and cautions. They request this because several of the incidents occurred while the product was not in its original container and, therefore, child-resistant packaging would not have prevented the incidents.

Response: The Commission agrees that education has value when used to communicate a safety message. Consumers need to be reminded to use child-resistant packaging properly. However, education does not replace the need for child-resistant packaging. Child-resistant packaging prevents ingestions and saves lives directly by creating a barrier between the child and the substance.

(b) *Parental responsibility. Comment:* One commenter (CP97–2–4) indicated that the issue was one of parental responsibility and that regulation was unnecessary.

Response: The issue of parental responsibility and child poisoning is not new. The Congressional Committee on Commerce dealt with this issue while drafting the Poison Prevention Packaging Act of 1970. The Committee report states, '' * * * parental negligence is not the primary cause of poisonings. There are too many potentially hazardous products in the modern home to hope that all of them can be kept out of the reach of children.'' Child-resistant packaging creates a barrier between the child and the hazardous product when adult vigilance is insufficient. Therefore, the Commission proposes a rule to protect from ingesting products having the same potential aspiration hazard as other products that currently are required to have child-resistant packaging.

(c) *Labeling. Comment:* Comments (CP97–2–6, –25) were received stating that the labeling required under the FHSA was adequate to protect against the hazard and that child-resistant packaging was therefore unnecessary.

Response: Labels make important information available to the consumer; however, poisoning data demonstrate the inadequacy of labeling alone as an injury prevention strategy. The PPPA itself recognizes that FHSA labeling is not necessarily adequate to protect children by giving the Commission the ability to require child-resistant packaging for products that are toxic and thus already have to bear precautionary labeling including ''Keep out of the reach of children.'' Human experience shows that it is unrealistic to expect labels to provide the same degree of protection as child-resistant packaging.

(d) *Garage storage. Comment:* A comment (CP97–2–1) stated that automotive products should not be included because they are stored in the garage and children do not have access to them.

(e) *Response:* The NEISS and TESS data included in the ANPR demonstrate that children do gain access to automotive products. These products should be in child-resistant packaging if they contain hydrocarbons and can be aspirated. Several companies voluntarily package their hydrocarbon-containing automotive products in child-resistant packaging.

(f) *Graffiti and ''huffing.'' Comment:* One commenter (CP97–2–25) stated that child-resistant packaging of aerosol paints would not prevent vandalism or inhalant abuse (huffing).

Response: The Commission agrees with the commenter. The purpose of this rulemaking is to prevent children under 5 years of age from ingesting products that result in serious injury. To the extent that graffiti and huffing are done by older children, this

recommended rule would have little, if any, effect on these behaviors. To the extent the comment argues that aerosols should not be subject to the rule, most (those that expel the substance as a mist) are not.

(g) *Increased risk of injury to children. Comment:* The Cosmetics, Toiletries, and Fragrance Association (CP97–2–28) commented that requiring child-resistant packaging on baby oil could result in an increase in babies falling from changing tables or an increase in drowning incidents in bath tubs because parents would have to use both hands to open the package.

Response: According to the CTFA, about 70 percent of baby oil is used on adults and not babies. The comment assumes that adults who use baby oil on children now use only one hand to open and squirt out the product. The CTFA provided no evidence to support this. Containers for other baby products, including tubes or jars, often require two hands to open or use. The labeling on baby powder, for example, instructs parents to sprinkle the powder into their hands and then rub it on the baby. The comment also assumes that two hands are required to open all child-resistant packaging. In fact, however, there are child-resistant designs that can be opened with one hand. Further, parents can open the baby oil container ahead of time. The Commission finds it highly unlikely that baby oil in child-resistant packaging would increase the number of falls and drowning incidents.

E. Injury Data

The following section updates the ingestion data from household chemical products. The injury data reviewed at the time the ANPR was issued did not include cosmetic products. The CPSC staff has now reviewed ingestions of cosmetics product categories, including nail products, sunscreen and suntan preparations, bath oil and creams, lotions, and make-up, and the results are outlined below, along with a separate discussion of baby oil ingestion data.

1. *Household chemicals.*

The CPSC maintains the NEISS database of product-related injuries that were treated in hospital emergency rooms. The NEISS data are derived from a statistical sample of hospital emergency rooms in the United States. However, many ingestion exposures are handled by Poison Control Centers and are not treated in emergency rooms. The TESS database, which includes calls to poison control centers, is not a statistical sample, and the numbers of incidents cannot be used to make national estimates. The number of exposures reported in TESS represents a large percentage of the total calls to poison centers in a given year. However, the total annual number of ingestion incidents is likely to be greater than the actual number of cases reported in TESS.

The CPSC staff examined the NEISS data for ingestions by children under 5 years of age for the years 1995 through 1997. The product categories examined include workshop chemicals, adhesives, lubricants, metal polishes, automotive chemicals, paints, varnishes, and shellacs, spot removers, and automotive waxes, polishes, and cleaners. There were an estimated 6,800 ± 1,800 pediatric ingestions of these products seen in emergency rooms during the 3-year period.

In addition, the CPSC purchases TESS data for children under 5 years of age from the AAPCC each year. The data purchased include reported exposure calls. Informational calls are not purchased. The data do not include trade names. They are coded for broad product categories in a single code. The CPSC staff examined unintentional ingestion incidents from categories that contain products that may require child-resistant packaging under the regulation. These include carpet, upholstery, leather, or vinyl cleaners; automotive hydrocarbons; hydrocarbon spot removers; lubricants; other hydrocarbons; unknown hydrocarbons; other or unknown rust removers; floor wax, polish, or sealers; toluene or xylene adhesives; toluene or xylene; stains; and varnish and lacquers.

There were 44,781 ingestions of these products recorded in TESS for the years 1995–1997 (12,592, 16,433, and 15,756, respectively). Of these ingestions, 612 cases were also coded as aspirations. According to TESS guidelines, aspiration cases are automatically coded as ingestions in the TESS system. Of the aspiration cases, 122 resulted in ''moderate'' medical outcomes and 4 in ''major'' outcomes. No deaths from these product categories were reported during this period. A number of children had specific respiratory effects that were the direct result of the aspiration of the product. These include 31 cases of pneumonitis, 5 cases of respiratory depression, and 1 case of pulmonary edema.

Not all products in these categories contain hydrocarbons or have a viscosity of less than 100 SUS at 100 °F. For example, many of the adhesives and lubricants may have viscosities higher than 100 SUS. However, the data demonstrate that children do access the types of household chemical products that can contain hazardous levels of hydrocarbons. If these products contain hydrocarbons and have viscosities less than 100 SUS at 100 °F, children are at risk of aspiration and pneumonia. If the products are not hazardous hydrocarbon-containing products, the proposed rule does not affect them.

(2) *Cosmetics.*

NEISS does not have specific codes for cosmetic products. Therefore, NEISS data are not included in the review of cosmetics ingestions. CPSC staff examined TESS data for the years 1995–1997 for 4 general cosmetic categories known to have products that contain hydrocarbons. These include miscellaneous nail products, sunscreen and suntan preparations, bubble bath and bath oil, and creams, lotions, and make-up.

There were 74,042 ingestions of these products recorded in TESS for the years 1995–1997 (21,850, 25,514, and 26,678, respectively). Of these ingestions, 114 cases were coded as aspirations. Of the aspiration cases, 5 resulted in ''moderate'' medical outcomes, 2 in ''major'' outcomes, and 1 in a death (from baby oil). A number of children had specific respiratory effects that were the direct result of the aspiration of the product. These include 2 cases of pneumonitis, 2 cases of respiratory depression, and 1 case of respiratory arrest.

As stated previously, not all of the products in the categories contain hydrocarbons. For example, bath oil may contain hydrocarbons, but bubble bath is usually an aqueous detergent solution that would not be covered by the rule. In addition, not all of the hydrocarbon-containing products in each category would require child-resistant packaging because they have viscosities of 100 SUS or more at 100 °F. Creams and lotions that are emulsions would also not be included. For example, the staff collected a convenience sample of 5 different tanning products labeled as containing mineral oil and measured the viscosities and percentages by weight of hydrocarbons in these products. Of the five tanning products collected, one was an emulsion (lotion), two were tanning oils with viscosities in the 240 SUS range, and two were tanning oils with viscosities in the 65 SUS range. Only the latter two products would require child-resistant packaging under the proposed rule. This analysis cannot be extrapolated to identify the percentage of products in any category that may fall within the scope of the recommended rule. The example illustrates that there can be a range of viscosities in cosmetic products in the same category.

The cosmetic trade association argues that the aspiration hazard does not exist for cosmetic products. However, some companies warn about the possibility of serious injury on their labels, using the following: ''For external use only. Keep out of children's reach to avoid drinking and accidental inhalation, which can cause serious injury. Should breathing problems occur, consult a doctor immediately.'' The FDA does not require this warning. The FDCA (21 CFR 740.1(a)) requires that ''the label of a cosmetic product bear a warning statement whenever necessary or appropriate to prevent a health hazard that may be associated with the product.''

The TESS database documents aspirations from cosmetic products. In addition, the reported cases of serious injuries and a death from baby oil, regardless of the circumstances and whether child-resistant packaging would have prevented them, reinforce and support the potential hazard of these products. The viscosities of these products fall in the range where aspiration may be a hazard. The poisoning data indicate that children are accessing household chemicals and cosmetics that contain hydrocarbons. The potential for serious injury exists.

(3) *Baby oil.*

The Commission was specifically interested in incidents involving baby oil. A literature review documented one case of serious injury following aspiration of baby oil (Reyes de la Rocha, *et al.,* 1985). The CTFA's comment documented a similar case that resulted in permanent impairment of a child. The limited details that the CTFA supplied did not directly correlate with the published case. The two cases may not be the same. Moreover, there was a death of a child following ingestion of baby oil documented by the AAPCC (Litovitz *et al.,* 1997). The CPSC staff investigated the circumstances of the death (IDI 97030HCC9033); however, limited information was obtained. The child died 23 days after the ingestion. There was speculation that between 10 and 14 ounces of baby oil may have been ingested, although it was reported that the child was covered with baby oil. According to the AAPCC report a part of the cap was found in the child's stomach. The CTFA questioned the circumstances of this death. Nevertheless, the reported decrease in oxygen saturation and lung infiltration are consistent with aspiration pneumonitis.

The CPSC purchased data on exposures to baby oil by children under 5 years of age that AAPCC had compiled for the years 1996 and 1997. Over 2,500 incidents were reported during the 2-year period. Most of these cases involved ingestion. Most of the cases were managed at home. Several children exhibited symptoms and were admitted to the hospital. The CTFA also purchased these data and commented. It concluded that the data demonstrate the safety of baby oil.

The Commission is concerned about products such as baby oil that use lightweight mineral oil and have viscosities in the 60–99 SUS range. The authors of one report of a case involving baby oil conclude that ''baby oil aspiration can be one of the causes of acute respiratory distress in children'' (Reyes de la Rocha, 1985). They advocate that the latent danger of baby oil needs to be publicized since it appears that baby oil is not recognized as a cause of diffuse pneumonia and respiratory distress. This was demonstrated in a recent case documented in NEISS (981026HEP9021). An infant was accidentally given baby oil. According to the mother, she was told by the poison control center and the pediatrician that the child would have diarrhea. However, 3 days later the child was admitted to the hospital with pneumonia. While child-resistant packaging would not have prevented this ingestion, the case illustrates the potential dangers of the lightweight-mineral-oil-based products with viscosities under 100 SUS.

F. Technical Feasibility, Practicability, and Appropriateness

The PPPA standards for child-resistance and adult-use-effectiveness are defined in 16 CFR 1700.15 and are based on the results of human performance tests described in 16 CFR 1700.20. When tested according to the methods, 80 percent of tested children (41–52 months old) (based on 200 children) must not be able to access the package. In addition, most packages must be accessible to 90% of tested adults aged 50–70. The exceptions to this are products that require metal containers with metal closures or aerosols. These products must be accessible to 90% of adults tested aged 18 to 45 (16 CFR 1700.15(b)(2)(ii)). When this notice refers to child-resistance, it also means that the package meets the senior standard, unless otherwise specified.

Before issuing a regulation under the PPPA, the Commission must find that child-resistant packaging is technically feasible, practicable, and appropriate for the regulated products. 15 U.S.C. 1472(a)(2). ''Technical feasibility'' may be found when technology exists or can be developed to produce packaging that conforms to the standards described above. ''Practicability'' means that packaging complying with the standards can utilize modern mass production and assembly line techniques. Packaging is ''appropriate'' when complying packaging will adequately protect the integrity of the substance and not interfere with its intended storage or use.

The CPSC staff assessed the packaging of a range of products that may be included in the rule. Based on that assessment, the Commission believes that child-resistant packaging is technically feasible, practicable, and appropriate for hydrocarbon-containing products. There are currently three product categories that contain petroleum-derived hydrocarbons and for which child-resistant packaging is required (16 CFR 1700.14(a)(2), (7), and (15)). Child-resistant packaging that meets the standards is available and compatible with these hydrocarbon-containing products. Many of the products that would be included in the recommended rule are similar in composition and use. This section will summarize technical information to support the findings for the variety of packaging types commonly used for hydrocarbon-containing products.

1. *Continuous threaded packaging.* Most packages that contain liquid products are currently sold with non-child-resistant continuous threaded (CT)(screw on) closures. These closures can be made of plastic or metal. This type of closure has been successfully modified to be child-resistant. There are several different types of child-resistant continuous threaded designs. The most common is the ASTM type IA closures. These are two-piece child-resistant closures that open by ''pushing and turning.'' These types of closures are already being used on hydrocarbon-containing products, such as liquid furniture polish and mineral spirits. These and other types of continuous threaded closures are available from many different manufacturers. Stock closures are available and come in a variety of sizes, skirt lengths, and liner options. Plastic-on-metal closures are also available for products with solvents that may be incompatible with plastics.

Closures are also available that can accept brush applicators. Smaller sizes of these closures may have to be developed to accommodate the small bottles used for nail dryers and nail moisturizers. These packages are very similar to those used for nail primers that contain methacrylic acid, for which the Commission recently required child-

resistant packaging. 64 FR 32799 (June 18, 1999).

In most cases, the development of new closures or sizes will be unnecessary. However, modifications to the bottle neck finish and/or to the existing sorting and capping equipment may be necessary to change from non-child-resistant to child-resistant continuous threaded packaging.

(2) *Dispensing packaging (inserts and flip-tops).* The staff examined some cosmetic products that would be included in the recommended rule. Many baby oil, suntan oil, and bath oil products are currently packaged with dispensing capability. Several different packaging designs are being used, including restricted orifice plug inserts, flip-top dispensers, and finger pump dispensers.

The plug inserts and the flip caps both function by decreasing the orifice of the opening of the bottle. The plug insert fits flush with the opening of the bottle and does not interfere with the function of the closure. A child-resistant continuous threaded closure can replace the existing non-child-resistant closure as described above. The CPSC is not aware of any commercially available child-resistant flip-top closures for liquids. However, plug inserts with child-resistant closures can be substituted and serve the same function. Plug inserts are compatible with mineral-oil-based cosmetics because several of the cosmetic products currently use plug inserts. Manufacturers may have to change bottle neck finishes or buy plug insert equipment if they are not currently using the inserts.

(3) *Pump dispensers.* Some suntan oils are available with finger pumps. The Commission recently addressed the child-resistance of finger pumps during the minoxidil rulemaking. In a comment in that rulemaking, a manufacturer said that it could make a child-resistant finger pump. The finger sprayer for minoxidil has to be metered to deliver a specific dose. This is not the case for hydrocarbon-containing products; therefore, the development of a finger sprayer for these products should be less complicated.

Companies using finger pumps have other options. Other products in this category use plug inserts as described above. In addition, there are several child-resistant overcaps being developed specifically for pump sprayers.

Some of these alternatives are more complex than others and would require more time and money to complete.

(4) *Aerosols and trigger sprayers.* Any product meeting the proposed requirements that is in aerosol, pump, or trigger sprayer packaging, and that is expelled as a stream, must be in a child-resistant package. Child-resistant aerosol overcaps are available on the market. There are several designs that are also senior friendly. Since the overcaps do not come in contact with the products, compatibility of overcaps is not an issue.

For products that currently use a trigger sprayer, the CPSC is aware of a child-resistant trigger sprayer on the market and of several other designs under development. The Commission addressed the issue of child-resistant trigger sprayers during the fluoride rulemaking (63 FR 29949).

(5) *Metal container closures.* There are several designs, including snap caps and CT's, that are child-resistant and can be used with metal cans. These types of closures are currently being used on lighter fluids and some paint solvents. They are commercially available and compatible with hydrocarbons.

The CPSC concludes that the available data support the finding that it is technically feasible, practicable, and appropriate to produce special packaging for products that contain 10 percent hydrocarbons or more by weight with a viscosity less than 100 SUS at 100 °F.

G. Effective Date

The PPPA provides that no regulation shall take effect sooner than 180 days or later than one year from the date such final regulation is issued, except that, for good cause, the Commission may establish an earlier effective date if it finds that it is in the public interest to do so. 15 U.S.C. 1471 note.

This rulemaking covers diverse groups of products with diverse packaging. Some of the packaging changes may be minimal, while others may be more extensive. For example, even though there are child-resistant packages readily available, changes from tool design to product-filling-line equipment may be required to replace some of the non-child-resistant packaging with various types of child-resistant packaging. In addition, there are multiple options available to manufacturers. Cost and consumer preference may play a role in determining which child-resistant feature is best suited to a product. Not all products in the same product category may take the same time to change to child-resistant packaging. However, the CPSC estimates that all of these packaging changes could be achieved within 1 year. Therefore, the Commission proposes an effective date of 1 year after publication of the final rule.

H. Economic Considerations

1. *Introduction.* Under the Regulatory Flexibility Act, the Commission must, when proposing a rule, either assess the impact of a regulation on small entities or certify that there will not be a significant economic effect on a substantial number of small entities. This section summarizes information about the potential impact on small businesses for both household chemical products and cosmetics and about the likely costs of packaging. After considering the available information, and the factors referred to in 15 U.S.C. 1472(b), the Commission concludes that the proposed rule is reasonable.

Three trade associations provided comments on economic issues: the Arts & Creative Materials Institute (''ACMI''); CSMA; and CTFA. The comments focused on (1) costs of child-resistant packaging for specific types of packaging or products and (2) the effects of the proposal on some manufacturers because of the uniqueness of their products. Only a few individual companies provided comments relating to economic issues.

Below, the Commission provides information on the products likely to contain hydrocarbons with characteristics subject to the proposal. Hydrocarbon-containing products regulated under the FHSA and FDCA are discussed separately.

2. *Hydrocarbon-containing products regulated under the FHSA.*

(a) *Market information.* Hydrocarbon-containing products for consumer use that are regulated under the FHSA appear in many product categories, including adhesives, air fresheners, all purpose cleaners, all purpose lubricants, art materials such as markers, automotive fluids and cleaners, metal cleaners and polishes, paint solvents, shoe polishes, spot removers, and water repellents. The products are dispensed in aerosol, gel, liquid and solid form.

Based on a survey of just a ''few'' of its 400 member companies, the CSMA reported that an average of about 80 million units of hydrocarbon-containing products are sold annually. The CSMA said its members consider product formulation to be confidential business information. One individual company reported annual average sales of about 2 million units of hydrocarbon-containing products in bottles and cans. However, no information on product categories or formulations was provided.

Table I provides 1996 dollar and unit sales for some categories of automotive and household cleaning products that

are likely to contain products formulated with hydrocarbons. However, the data do not reveal the share of the market attributable to hydrocarbon-containing products with characteristics that meet the criteria for the proposed rule or that are now packaged in child-resistant packaging.

TABLE 1.—SELECTED HOUSEHOLD PRODUCT CATEGORIES LIKELY TO CONTAIN PRODUCTS FORMULATED WITH HYDROCARBONS

Product category	$ Sales (millions)	Units [1] (millions)	Average retail price ($)
Auto treatments/ other auto fluids	276.9	164.6	1.68
Auto waxes/polishes	218.5	83.9	2.60
Furniture polish	212.0	54.0	3.93
Floor cleaners, wax, wax removers	109.7	47.6	2.30
Shoe/vinyl polish, cleaner/wax	31.0	13.1	2.37
Specialty cleaner, polish	48.4	9.5	5.09
Household lubricants	13.6	7.1	1.92

Source: Share Facts, Find/SVP, 1996
[1] Units are defined by Share Facts as 16 oz. equivalents

The Table 1 data do not include paints, coatings, or art materials. Although the National Paint and Coating Association (''NPCA''), which represents about half of the manufacturers or fillers of aerosol paints, noted that many aerosol paint formulas contain hydrocarbons, the association did not provide unit or dollar sales for these products. However, products packaged in aerosol containers that deliver a fine mist spray would not be subject to the proposed rule. Additionally, non-aerosol paints are not subject to the proposed rule because of their high viscosity.

The ACMI represents about 200 member companies that manufacture art and creative materials. ACMI surveyed its members and reported that less than 60 (exact number unknown) sell products that the proposal would cover. The association wrote that the products to which the proposal would apply are fairly specialized products used by adults (product types unspecified) in the art/hobby fields and that the products may not have a large sales volume. ACMI did not provide unit or dollar sales.

(b) *Packaging costs.* Neither the ACMI nor CSMA provided information on the potential costs of providing child-resistant packaging for their members' products. The ACMI reported that its members did not provide sufficient cost-related information to respond to the request. ACMI wrote that some member manufacturers are voluntarily using child-resistant packaging for certain hazardous products and that since members ''tend to support the proposal and have products already in child-resistant packaging, it would not appear to raise major cost obstacles.''

While neither ACMI nor CSMA provided information on potential costs, it might be noted that incremental costs for child-resistant packaging typically range from $0.005 to $0.02 per package. For products using a recently developed child-resistant trigger spray, incremental costs will amount to about $0.025 per package.

(c) *Small business effects.* The Commission does not know the universe of companies that would be affected by the proposed requirement. At least 1,500 large and small companies were notified of the proposal through trade associations and individual mailings. However, the responses to the ANPR provided no information indicating that small businesses would be significantly affected by the proposed child-resistant-packaging requirement. Additionally, there are several reasons to believe that the proposed rule would not have a significant impact on affected companies. Some manufacturers of household products that are subject to the proposal are currently providing child-resistant packaging. Manufacturers of household products typically have diverse product lines that also include product formulations that would not be included under the proposal. Thus, the number of products that would require child-resistant packaging may represent a small proportion of a firm's production. Finally, the firms would be able to exhaust existing inventory, since the rule would not apply to products packaged before the effective date.

Only two individual small companies commented on the packaging costs that would be incurred to convert their products to child-resistant packaging. While both indicated there would be an economic burden, neither provided specific cost information. The product of one company is packaged in an aerosol container and delivers a fine mist spray; the product of the other company is packaged in a tube with a restricted-flow moist-fiber applicator tip. Neither of these package types would be covered under the proposed rule; thus, the proposal will have no effect on these companies.

Based on the response to the ANPR, and the wide availability and relatively small incremental costs of child-resistant packaging, the Commission certifies that the proposed rule, if promulgated and as it relates to products regulated under the FHSA, will not have a significant economic effect on a substantial number of small entities.

3. *Hydrocarbon-containing products regulated under the FDCA.*

(a) *Market information.* Mineral oil, a hydrocarbon available in a wide range of viscosities, is used in a number of personal care products regulated under the FDCA. Products containing mineral oil and having a low viscosity, such as some baby oils, bath, massage, and sensual aroma oils, eye makeup removers, and nail care and sun care preparations, would also be covered under the proposed rule. While many of these products are typically sold separately, others are sold as part of a gift box that includes several items, for example, fragrant bath oil packaged with a soap and powder. The products may have aerosol, foam, gel, liquid, lotion, and solid formulations, and use a variety of delivery systems.

The CTFA, which represents about 275 manufacturers of cosmetic products, commented that most cosmetics product categories containing mineral oil are marketed in solid form and thus do not present an aspiration hazard. The association also noted that only a few of the cosmetics in liquid form would be subject to the contemplated child-resistant packaging requirement. This is because most exceed the viscosity limit and/or contain less than 10% hydrocarbons.

Many baby oil products are available in cream, lotion, and gel formulations.

The proposed rule will not affect these products because of their high viscosity. Similarly, the proposal will not affect many sun care products because of their high viscosities (creams, gels, lotions, solid sticks) or because they do not contain hydrocarbons.

In response to the ANPR, CTFA sent a survey to over 200 representatives of member companies and received only 15 completed surveys. CTFA reported that some companies returned the survey stating that they used no hydrocarbons, they were not currently marketing subject products, or their products were not for household use. In addition to products containing hydrocarbons, most manufacturers of cosmetics typically have extensive product lines and use various formulations without hydrocarbons. The association summarized member comments and provided information only by product category, without identifying brands or companies. There was no indication as to whether the responding companies were ''small'' or ''large'' businesses. Only manufacturers of baby oil provided market share and unit sales data in response to the survey. Based on these data, CPSC staff estimates the annual sales of baby oil at about 35 million units.

For all cosmetic product categories, *Drug Topics* (May 5, 1997) indicated that sales amounted to $2.9 billion and 911.5 million units in 1996. No breakout by type of product was given. However, the trade publication *Happi* (March 1996) reported that sun care products, a cosmetics category with some hydrocarbon-containing preparations, had $393.8 million in sales (almost 70 million units) in drug, food, and mass merchandise stores in 1995. However, *Happi* did not provide a breakout of the products that make up the sun care category, which includes sunscreens/sunblocks, self-tanners, and after-sun preparations.

(b) *Packaging costs.* Packaging for cosmetic products that may contain mineral oil currently includes finger press and pump dispensers, continuous threaded closures, flip tops with restricted orifices, finger spray pumps, and trigger sprays. Some nail care products are packaged with a plug insert restricted-neck fitting in the bottle's neck to remove excess product from the applicator brush.

According to a leading closure manufacturer, incremental costs for some types of child-resistant packaging that can be used for baby oil, sun care, and other mineral-oil-containing cosmetics are about $0.01 per unit (depending upon size, quantity ordered, and color). These package types include a commercially available package with a child-resistant closure and a restricted-neck fitting, and a dispensing cap with a flip top is under development. CTFA commented that a marketer of eye makeup remover reported the incremental cost for child-resistant packaging for the company's product would amount to 1.5 cents. Additionally, the incremental cost for a recently developed child-resistant trigger spray is about $0.025 per unit.

There is an unknown quantity of nail care products that the proposal may affect. Samples of mineral-oil-containing cuticle and nail oils CPSC staff examined were packaged with 13–20mm diameter neck finishes on bottles with built-in applicator brushes. They contain 0.4 to 1.0 oz of product. It may be necessary for some suppliers to change the closure and bottle finish in order to accommodate potentially available child-resistant packaging. There are at least two U.S.-based packaging manufacturers that could develop child-resistant closures with applicator brushes. No information is available regarding the incremental cost of such packaging.

In addition to the incremental cost of child-resistant packaging, manufacturers may also incur one-time start-up costs. Initial costs vary widely according to the product and to the extent of package redesign. CTFA provided estimates of one-time packaging costs based on the member survey noted earlier. The estimates for child-resistant packaging for baby oil, bath oil, and sunscreen products ranged from $163,000 to $1.5 million and, depending upon manufacturer, included research and development, new bottle molds, new custom-designed caps, and new tooling for product-filling lines. No specific information was provided to support these costs.

One manufacturer, providing comments independent of the CTFA, estimated the start-up costs for child-resistant packaging for baby oil at $122,000 for tooling and changing parts, assuming that only the closure changed and bottle shapes and sizes were not affected. The estimates for tooling and changing parts for child-resistant packaging for a tanning oil, moisture lotion, and bath oil ranged from $6,100 to $85,100.

(c) *Small business effects.* The concerns of some cosmetics manufacturers center on the need for custom-design packaging, especially for products with small markets, and on the effect of using child-resistant packaging on exports. As noted earlier, CTFA did not provide information regarding the identity of responding companies; thus, the Commission does not know if these manufacturers are small businesses. The high start-up cost estimates for custom-design child-resistant packaging were discussed above. One unidentified CTFA member commented that ''packaging aesthetics is an integral element of cosmetics and [is] a key factor in packaging decisions and ultimately, consumer purchases.'' Several companies indicated that they would be forced to discontinue various products if child-resistant closures were required, because product sales would not support the costs of providing the packaging. Data regarding types of product, formulation, sales volume, and projected packaging costs were not provided.

A number of CTFA member companies also expressed concerns regarding exports of child-resistant packaged cosmetics. According to CTFA, packaging requirements for cosmetics would adversely impact global sales because ''of a negative consumer perception in foreign countries about the safety of the U.S. product with a child-resistant closure versus the foreign competitor's product that is not child resistant.'' The association also commented that a foreign competitor's packaging cost could be lower than the U.S. product with a child-resistant closure and that consumers would buy the cheaper product in many cases. The association did not provide comparisons between foreign and domestic costs or data regarding the value of exports that the proposal may impact. The proposed rule does not require companies that export affected cosmetic products to use child-resistant packaging for their exports.

CTFA reports that one member company manufacturing a massage oil packaged with a continuous threaded closure and a restricted flow opening would drop the product rather than provide child-resistant packaging. According to CTFA, the product, selling at retail for $26 (6.7 oz) has low sales volume that does not make it ''worth the investment to refit with special packaging.'' No estimate of the magnitude of the investment for child-resistant packaging was provided. Additionally, CTFA reported that one manufacturer of nail products said it would discontinue two products if child-resistant packaging were required. A second nail-product manufacturer anticipated that child-resistant packaging would cost several thousand dollars for custom cap retooling and result in a 40% increase (unstated dollar value) in ongoing packaging costs. The size of these businesses is unknown.

The Commission does not know the universe of companies that would be affected by the proposed requirement for child-resistant packaging for products regulated under the FDCA. The Commission requests that suppliers, especially small businesses and organizations representing small businesses, provide specific information about their products and the effect the proposed rule would have on them. The responses to the ANPR did not indicate that many small businesses would be affected. The wide availability and relatively small incremental costs of child-resistant packaging relative to the retail price of cosmetic products suggest that few firms should have a significant economic burden.

Based on the economic information available on the proposed rule affecting products regulated under the FDCA, the Commission certifies that the proposed rule, if promulgated, would not have a significant economic effect on a substantial number of small entities.

I. Preliminary Environmental Assessment

Pursuant to the National Environmental Policy Act, and in accordance with the Council on Environmental Quality regulations and CPSC procedures for environmental review, the Commission has preliminarily assessed the possible environmental effects associated with the proposed packaging requirements for household products that contain hydrocarbons of low viscosity.

The Commission's regulations at 16 CFR 1021.5(c)(3) state that the rules requiring special packaging for consumer products normally have little or no potential for affecting the human environment. Preliminary analysis of the impact of this proposed rule indicates that child-resistant packaging requirements for the production of marketers of low-viscosity hydrocarbon-containing products under the proposed rule will have no significant effects on the environment. The manufacture, use, and disposal of child-resistant closures will present the same environmental effects as do non-child-resistant closures.

J. Executive Orders

This proposed rule has been evaluated in accordance with Executive Order No. 13,083, and the rule raises no substantial federalism concerns.

Executive Order No. 12,988 requires agencies to state the preemptive effect, if any, to be given the regulation. The preemptive effects of these rules is established by Section 7 of the PPPA, which states:

> (a) * * * whenever a standard * * * under [the PPPA] applicable to a household substance is in effect, no State or political subdivision of a State shall have any authority either to establish or continue in effect, with respect to such household substance, any standard for special packaging (and any exemption therefrom and requirement related thereto) which is not identical to the [PPPA] standard [and exemption, etc.].

15 U.S.C. 1476(a).

Subsection (b) of 15 U.S.C. 1476 provides a circumstance under which subsection (a) does not prevent the Federal Government or the government of any State or political subdivision of a State from establishing or continuing in effect a special packaging requirement applicable to a household substance for its own [governmental] use, and which is not identical to the standard applicable to the product under the PPPA. This occurs if the Federal, State, or political subdivision requirement provides a higher degree of protection from such risk of injury than the consumer product safety standard.

Subsection (c) of 15 U.S.C. 1476 authorizes a State or a political subdivision of a State to request an exemption from the preemptive effect of a special packaging requirement. The Commission may grant such a request, by rule, where the State or political subdivision standard or regulation (1) would not cause the household substance to be in violation of the Federal standard, (2) provides a significantly higher degree of protection from the risk of injury than does the Federal standard and (3) does not unduly burden interstate commerce.

K. Trade Secret or Proprietary Information

Any person responding to this notice who believes that any information submitted is trade secret or proprietary should specifically identify the exact portions of the document claimed to be confidential. The Commission's staff will receive and handle such information confidentially and in accordance with section 6(a) of the Consumer Product Safety Act (''CPSA''), 15 U.S.C. 2055(a). Such information will not be placed in a public file and will not be made available to the public simply upon request. If the Commission receives a request for disclosure of the information or concludes that its disclosure is necessary to discharge the Commission's responsibilities, the Commission will inform the person who submitted the information and provide that person an opportunity to present additional information and views concerning the confidential nature of the information. 16 CFR 1015.18(b).

The Commission's staff will then make a determination of whether the information is trade secret or proprietary information that cannot be released. That determination will be made in accordance with applicable provisions of the CPSA; the Freedom of Information Act (''FOIA''), 5 U.S.C. 552b; 18 U.S.C 1905; the Commission's procedural regulations at 16 CFR Part 1015 governing protection and disclosure of information under provisions of FOIA; and relevant judicial interpretations. If the Commission concludes that any part of information that has been submitted with a claim that the information is a trade secret or proprietary is disclosable, it will notify the person submitting the material in writing and provide at least 10 calendar days from the receipt of the letter for that person to seek judicial relief. 15 U.S.C. 2055(a)(5) and (6); 16 CFR 1015.19(b).

List of Subjects in 16 CFR Part 1700

Consumer protection, Drugs, Infants and children, Packaging and containers, Poison prevention, Reporting and recordkeeping requirements.

Effective date. The Commission proposes that the rule become effective 1 year after publication of the final rule. This period will allow manufacturers to make any changes in their production needed to comply with the standard without unduly delaying the safety benefits expected from the rule.

For the reasons set out in the preamble, the Commission proposes to amend 16 CFR 1700.14 as set forth below.

1. The authority citation for part 1700 continues to read as follows:

Authority: 15 U.S.C. 1471–1476.

Secs. 1700.1 and 1700.14 also issued under 15 U.S.C. 2079(a).

2. In § 1700.14 add new paragraphs (a)(30) and (a)(31) to read as follows:

§ 1700.14 Substance requiring special packaging.

(a) * * *

(30) *Hazardous substances containing low-viscosity hydrocarbons.* All prepackaged nonemulsion-type liquid household chemical products that are hazardous substances as defined in the Federal Hazardous Substances Act (FHSA) (15 U.S.C. 1261(f)), and that contain 10 percent or more hydrocarbons by weight and have a viscosity of less than 100 SUS at 100° F, shall be packaged in accordance with the provisions of § 1700.15(a), (b), and (c), except for the following:

(i) Products in packages in which the only non-child-resistant access to the

contents is by a spray device (*e.g.,* aerosols or pump-or trigger-actuated sprays) that expels the product solely as a mist. This exemption includes products that expel the product as a mist in their as-sold condition, but that can be modified by adding a tube to expel the product as a stream.

(ii) Writing markers and ballpoint pens exempted from labeling requirements under the FHSA by 16 CFR 1500.83.

(iii) Products from which the liquid cannot flow freely, including but not limited to paint markers and battery terminal cleaners. For the purposes of this requirement, hydrocarbons are defined as substances that consist solely of carbon and hydrogen. For products that contain multiple hydrocarbons, the total percentage of hydrocarbon in the product is calculated by adding the percentage by weight of the individual hydrocarbon components.

(31) *Drugs and cosmetics containing low-viscosity hydrocarbons.* All prepackaged nonemulsion-type liquid household chemical products that are drugs or cosmetics as defined in the Federal Food, Drug, and Cosmetics Act (FDCA) (21 U.S.C. 321(a)), and that contain 10 percent or more hydrocarbons by weight and have a viscosity of less than 100 SUS at 100° F, shall be packaged in accordance with the provisions of § 1700.15(a), (b), and (c), except for the following:

(i) Products in packages in which the only non-child-resistant access to the contents is by a spray device (*e.g.,* aerosols or pump- or trigger-actuated sprays) that expels the product solely as a mist. This exemption includes products that expel the product as a mist in their as-sold condition, but that can be modified by adding a tube to expel the product as a stream.

(ii) Products from which the liquid cannot flow freely, including but not limited to makeup removal pads. For the purposes of this requirement, hydrocarbons are defined as substances that consist solely of carbon and hydrogen. For products that contain multiple hydrocarbons, the total percentage of hydrocarbon in the product is calculated by adding the percentage by weight of the individual hydrocarbon components.

* * * * *

Dated: December 23, 1999.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 99–33770 Filed 12–30–99; 8:45 am]

BILLING CODE 6355–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IL177–1b; FRL–6506–4]

Approval and Promulgation of Implementation Plan: Illinois

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve an Illinois' State Implementation Plan (SIP) revision request affecting air permit rules, submitted on July 23, 1998. In the final rules section of this **Federal Register**, the EPA is approving the State's request as a direct final rule without prior proposal because EPA views this action as noncontroversial and anticipates no adverse comments. A detailed rationale for approving the State's request is set forth in the direct final rule. The direct final rule will become effective without further notice unless the Agency receives relevant adverse written comment on this action. Should the Agency receive such comment, it will publish a withdrawal of the final rule informing the public that the direct final rule will not take effect and such public comment received will be addressed in a subsequent final rule based on this proposed rule. If no adverse written comments are received, the direct final rule will take effect on the date stated in that document and no further activity will be taken on this action. EPA does not plan to institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Written comments on this proposed rule must be received on or before February 2, 2000.

ADDRESSES: Written comments should be mailed to:

J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

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

FOR FURTHER INFORMATION CONTACT: Lauren Steele, Environmental Engineer, Permits and Grants Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–5069.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule published in the final rules section of this **Federal Register**.

Dated: December 1, 1999.

Jo Lynn Traub,

Acting Regional Administrator, Region 5.

[FR Doc. 99–33625 Filed 12–30–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MT–001–0016b; FRL–6505–9]

Clean Air Act Approval and Promulgation of Air Quality Implementation Plan Revision for Montana; Revisions to the Missoula County Air Quality Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State implementation plan (SIP) revisions submitted by the Governor of Montana with a letter dated November 14, 1997. This submittal consists of several revisions to Missoula County Air Quality Control Program regulations, which were adopted by the Montana Board of Environmental Review (MBER) on October 31, 1997. These rules include regulations regarding general definitions, open burning, and criminal penalties. This submittal also includes revisions to regulations regarding national standards of performance for new stationary sources (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAPs), which will be handled separately.

In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial SIP revision and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated in relation to this rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing on or before February 2, 2000.

ADDRESSES: Written comments may be mailed to Richard R. Long, Director, Air and Radiation Program, Mailcode 8P-AR, Environmental Protection Agency (EPA), Region VIII, 999 18th Street, suite 500, Denver, Colorado, 80202. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air and Radiation Program, Environmental Protection Agency, Region VIII, 999 18th Street, suite 500, Denver, Colorado, 80202. Copies of the State documents relevant to this action are available for public inspection at the Montana Department of Environmental Quality, 1520 E. 6th Avenue, Helena, Montana, 59620–0901.

FOR FURTHER INFORMATION CONTACT: Amy Platt, EPA, Region VIII, (303) 312–6449.

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final action of the same title which is located in the Rules and Regulations section of this **Federal Register**.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: November 30, 1999.

Max H. Dodson,

Acting Regional Administrator, Region VIII.

[FR Doc. 99–33623 Filed 12–30–99; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 18

RIN 1018–AF87

Marine Mammals; Incidental Take During Specified Activities

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: This proposed rule would extend our existing rule issued Thursday, January 28, 1999 (64 FR 4328), and codified at 50 CFR Part 18, Subpart J to authorize the incidental, unintentional take of small numbers of polar bears and Pacific walrus during oil and gas industry (Industry) exploration, development, and production operations in the Beaufort Sea and adjacent northern coast of Alaska. This proposed rule authorizes incidental, unintentional take of small numbers of polar bears and Pacific walrus only for activities covered by our existing regulations at 50 CFR Part 18, Subpart J; incidental take resulting from any subsea pipeline activities located offshore in the Beaufort Sea is not authorized. If made final, this proposed rule would extend the effective period for the current regulations for 61 days through March 31, 2000.

DATES: Comments on this proposed rule must be received by January 13, 2000.

ADDRESSES: If you wish to comment, you may submit comments by any one of several methods.

1. By mail to: John Bridges, U.S. Fish and Wildlife Service, Office of Marine Mammals Management, 1011 East Tudor Road, Anchorage, AK 99503.

2. By FAX by sending to: (907) 786–3816.

3. By Internet, electronic mail by sending to: FW7MMM@fws.gov. Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include ''Attn.: RIN 1018–AF87'' and your name and return address in your Internet message. If you do not receive a confirmation from the system that we have received your Internet message, contact us directly at U.S. Fish and Wildlife Service, Office of Marine Mammals Management (907) 786–3810 or 1–800–362–5148.

4. By hand-delivery to: U.S. Fish and Wildlife Service, Office of Marine Mammals Management, 1011 East Tudor Road, Anchorage, AK 99503.

Comments and materials received in response to this action are available for public inspection during normal working hours of 8 a.m. to 4:30 p.m., Monday through Friday, at the Office of Marine Mammals Management, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, AK 99503.

FOR FURTHER INFORMATION CONTACT: John Bridges, Office of Marine Mammals Management, U.S. Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, AK 99503, Telephone (907) 786–3810 or 1–800–362–5148.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(A) of the Marine Mammal Protection Act (Act) gives the Secretary of the Interior (Secretary) through the Director of the U.S. Fish and Wildlife Service (We) the authority to allow the incidental, but not intentional, taking of small numbers of marine mammals in response to requests by U.S. citizens (you) [as defined in 50 CFR 18.27(c)] engaged in a specified activity (other than commercial fishing) in a specified geographic region. We may grant permission for incidental takes for periods of up to 5 years. On January 28, 1999, we published in the **Federal Register** (64 FR 4328) regulations to allow such incidental takes in the Beaufort Sea and adjacent northern coast of Alaska for the period January 28, 1999, through January 30, 2000. These regulations were based on the findings for the 1-year period that the effects of oil and gas related exploration, development, and production activities in the Beaufort Sea and adjacent northern coast of Alaska would have a negligible impact on polar bears and Pacific walrus and their habitat and no unmitigable adverse impact on the availability of these species for subsistence uses by Alaska Natives, if certain conditions were met.

Our present action proposes to extend the current regulations, which are located at 50 CFR Part 18, Subpart J, through March 31, 2000. This rulemaking will avoid a lapse in these regulations that could occur while we consider public comment on our proposed regulations published December 9, 1999 (64 FR 68973), the comment period for which closes on January 10, 2000. Those proposed regulations would allow the incidental, unintentional take of small numbers of polar bears and Pacific walrus for a 3-year period during year-round oil and gas activities, including incidental takes resulting from the construction and operation of a subsea pipeline associated with the offshore Northstar facility.

The expiration of our existing regulations on January 30, 2000, may not allow us sufficient time to fully consider and evaluate public comments on our December 9, 1999, proposed rule. Therefore, we propose extending our existing regulations for 2 months to ensure that we have adequate time to thoroughly review and respond to public input. We believe it is important to avoid a lapse in our regulations and maintain the coverage and protection for polar bears and Pacific walrus provided by those regulations. With the continued coverage, existing Letters of Authorization, which require monitoring and reporting of all polar bear interactions as well as site-specific mitigation measures, will remain in effect.

Prior to issuing the existing regulations, we evaluated the level of industrial activities, their associated impacts to polar bears and Pacific walrus, and their effects on the availability of these species for subsistence use. Based on the best scientific information available and the results of 6 years of monitoring data, we found that the effects of oil and gas related exploration, development, and production activities in the Beaufort Sea and the adjacent northern coast of

Alaska would have a negligible impact on polar bears and Pacific walrus and their habitat. We also found that the activities as described would have no unmitigable adverse impacts on the availability of these species for subsistence use by Alaska Natives.

If we reach final ''negligible impact'' and ''no unmitigable adverse impact to subsistence take'' findings, then we will extend the regulations that include permissible methods of taking and other means to ensure the least adverse impact on the species and its habitat and on the availability of the species for subsistence uses along with other relevant sections. This will include requirements for monitoring and reporting. The geographic coverage is the same as the existing regulations. All existing Letters of Authorization will be extended contingent upon these regulations being issued in final form.

Description of Activity

This rulemaking covers activities as described in the existing rule that we expect to occur during the brief duration of this rule. These activities include exploration activities such as geological and geophysical surveys, which include geotechnical site investigation, reflective seismic exploration, vibrator seismic data collection, air gun and water gun seismic data collection, explosive seismic data collection, geological surveys, and drilling operations. Development and production activities located on the North Slope along the shores of the Beaufort Sea are included. The activities are limited to those that occur during the winter. The level of activity expected is similar to that as occurred last winter under the existing regulations. This region contains more than 11 separate oil fields. All of the fields lie within the range of polar bears.

Effects of Oil and Gas Industry Activities on Marine Mammals and on Subsistence Uses

Polar Bear

Winter oil and gas activities may affect polar bears. Polar bears that continue to move over the ice pack through the winter are likely to encounter Industry activities. Curious polar bears are likely to investigate artificial or natural islands where drilling operations occur. Any on-ice activity creates an opportunity for interactions between bears and industry. Offshore drill sites may modify habitat and attract polar bears to artificial open leads downwind from the activity. Polar bears attracted to these open water leads create the potential for Industry/polar bear encounters. Winter seismic activities have a potential of disturbing denning females, which are sensitive to noise disturbances. Prior to initiating surveys, industry consults with us through applications for Letters of Authorization. Specific terms of a Letter of Authorization require that industrial activities avoid known or observed dens by 1 mile through cooperative operating procedures. In addition, Letters of Authorization require development of polar bear interaction plans for each operation. Industry personnel participate in training programs while on site to minimize detrimental effects on personnel and polar bears. During the past 6 years, Letter of Authorization conditions have limited the time and location of Industry activities in known polar bear denning habitat. In addition to avoiding known den locations of radio collared polar bears, Industry has conducted aerial survey overflights of potential denning habitat using forward looking infrared thermal sensors to detect dens located beneath snow. A number of den locations have been identified prior to Industry activities, avoiding potential disturbance. Regarding polar bear/human interactions, Industry has taken proactive steps to minimize the aspect of scent attraction to sites through proper disposal of garbage and waste products. Yet a number of potentially dangerous encounters have occurred in recent years. These encounters have not resulted in injury to polar bears or humans. A degree of credit for this success rate is attributed to enhanced employee awareness and proper responses to polar bear encounters brought about through materials contained within polar bear interaction plans.

Pacific Walrus

Pacific walrus rarely use the geographical area during the preferred open water season and do not occur in the area during the winter including the February and March period of the proposed regulations. Consequently, no direct or cumulative effect of Industry activities to Pacific walrus would be expected.

Subsistence

Polar Bears

Polar bears may be hunted in February and March by residents of Barrow, Nuiqsut, and Kaktovik, although the numbers of bears taken in mid-winter months is typically less than during the spring or fall seasons. Hunter success varies from year to year and with seasonal variations within a year. As required in the existing regulations, Industry is required to work through plans of cooperation with potentially affected subsistence communities to minimize and mitigate for potential impact on the availability of polar bears for subsistence uses, where necessary. We do not expect conflicts between subsistence users and Industry during the February and March term of these regulations. Previously, we have not noted conflicts between subsistence users and Industry under the existing regulations.

Pacific Walrus

Pacific walrus are not present and thus are unavailable for harvest during the winter in this area. No direct or cumulative effect on their availability for take for subsistence use would occur from industrial activities.

Conclusions

Based on the previous discussion of direct and cumulative effects of the proposed activities, and 6 years of results of prior monitoring programs, we make the following findings regarding this proposed rulemaking. We find, based on scientific information and the results of 6 years' monitoring data, that the effects of oil and gas exploration, development, and production activities for the period January 31, 2000, through March 31, 2000, in the Beaufort Sea and adjacent northern coast of Alaska will have a negligible impact on polar bears and Pacific walrus and their habitat, and that there will be no unmitigable adverse impacts on the availability of these species for take for subsistence uses by Alaska Natives if conditions contained within Letters of Authorization are met. Consistent with our current regulations at 50 CFR Part 18, Subpart J, our findings apply to exploration, development, and production related to oil and gas activities, excluding any construction and production activities associated with subsea pipelines at the Northstar facility.

Required Determinations

Environmental documents prepared for our regulations at 50 CFR Part 18, Subpart J concluded in a finding of no significant impact. These proposed regulations cover the same activities as analyzed under the current environmental assessment and are therefore consistent with those findings and the requirements of the National Environmental Policy Act.

This document has not been reviewed by the Office of Management and Budget under Executive Order 12866 (Regulatory Planning and Review). This

rule will not have an effect of $100 million or more on the economy; 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; will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; does not alter the budgetary effects or entitlement, grants, user fees, or loan programs or the rights or obligations of their recipients; and does not raise novel legal or policy issues. The proposed rule is not likely to result in an annual effect on the economy of $100 million or more. Expenses will be related to, but not necessarily limited to, the development of applications for regulations and Letters of Authorization (LOA), monitoring, record keeping, and reporting activities conducted during Industry oil and gas operations, development of polar bear interaction plans, and coordination with Alaska Natives to minimize effects of operations on subsistence hunting. Compliance with the rule is not expected to result in additional costs to Industry that it has not already been subjected to for the previous 6 years. Realistically, these costs are minimal in comparison to those related to actual oil and gas exploration, development, and production operations. The actual costs to Industry to develop the petition for promulgation of regulations (originally developed in 1997) and LOA requests probably does not exceed $500,000 per year, short of the ''major rule'' threshold that would require preparation of a regulatory impact analysis. As is presently the case, profits would accrue to Industry; royalties and taxes would accrue to the Government; and the rule would have little or no impact on decisions by Industry to relinquish tracts and write off bonus payments.

We have determined that this rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. The proposed rule is also not likely to result in a major increase in costs or prices for consumers, individual industries, or government agencies or have significant adverse effects on competition, employment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

We have also determined that this proposed rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* Oil companies and their contractors conducting exploration, development, and production activities in Alaska have been identified as the only likely applicants under the regulations. These potential applicants have not been identified as small businesses. The analysis for this rule is available from the person in Alaska identified above in the section, **FOR FURTHER INFORMATION CONTACT.**

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this request prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

This proposed rule is not expected to have a potential takings implication under Executive Order 12630 because it would authorize the incidental, but not intentional, take of polar bear and walrus by oil and gas industry companies and thereby exempt these companies from civil and criminal liability.

This proposed rule also does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 13132. Coordination with appropriate Alaska State agencies has occurred, and necessary permits have been received to ensure State consistency. In addition, extensive coordination with the North Slope Borough and other Alaska Native organizations has occurred concerning this issue. In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501, *et seq.*), this rule will not ''significantly or uniquely'' affect small governments. A Small Government Agency Plan is not required. The Service has determined and certifies pursuant to the Unfunded Mandates Reform Act that this rulemaking will not impose a cost of $100 million or more in any given year on local or State governments or private entities. This rule will not produce a Federal mandate of $100 million or greater in any year, *i.e.,* it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act.

The Departmental Solicitor's Office has determined that these regulations meet the applicable standards provided in Sections 3(a) and 3(b)(2) of Executive Order 12988.

The information collection contained in 50 CFR Part 18, Subpart J has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and assigned clearance number 1018–0070. The OMB approval of our collection of this information will expire in October 2001. Section 18.129 contains the public notice information—including identification of the estimated burden and obligation to respond—required under the Paperwork Reduction Act. Information from our Marking, Tagging, and Reporting Program is cleared under OMB Number 1018–0066 pursuant to the Paperwork Reduction Act. For information on our Marking, Tagging, and Reporting Program, see 50 CFR 18.23(f)(12).

List of Subjects in 50 CFR Part 18

Administrative practice and procedure, Alaska, Imports, Indians, Marine mammals, Oil and gas exploration, Reporting and recordkeeping requirements, Transportation.

For the reasons set forth in the preamble, we propose to amend Part 18, Subchapter B of Chapter 1, Title 50 of the Code of Federal Regulations as set forth below:

PART 18—MARINE MAMMALS

1. The authority citation for 50 CFR Part 18 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*

2. Revise § 18.123 to read as follows:

§ 18.123 When is this rule effective?

Regulations in this subpart are effective through March 31, 2000, for oil and gas exploration, development, and production activities.

Dated: December 23, 1999.

Stephen C. Saunders,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 99–34066 Filed 12–28–99; 4:08 pm]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 223

[Docket No. 991207318–9318–01; I.D. 092799G]

RIN 0648–AG15

Limitation on Section 9 Protections Applicable to Salmon Listed as Threatened under the Endangered Species Act (ESA), for Actions Under Tribal Resource Management Plans (Tribal Plans)

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

ACTION: Proposed rule; request for comments and notice of public hearings.

SUMMARY: The National Marine Fisheries Service (NMFS) proposes to modify the ESA section 9 take prohibitions applied to threatened salmonids by creating a new limitation on those prohibitions. NMFS does not find it necessary and advisable to impose prohibitions on take when impacts on listed salmonids results from implementation of a tribal resource management plan (Tribal Plan), where the Secretary of Commerce (Secretary) has determined that implementing that Tribal Plan will not appreciably reduce the likelihood of survival and recovery for the listed species. Threatened salmonids that are currently subject to ESA section 9(a) take prohibitions which would be modified by the proposal include Snake River spring/summer chinook salmon; Snake River fall chinook salmon; Central California Coast (CCC) coho salmon; and Southern Oregon/Northern California Coast (SONCC) coho salmon. This proposed limitation on take prohibitions would also be available to all other threatened salmonid Evolutionarily Significant Units (ESUs) whenever final protective regulations make the take prohibitions of ESA section 9(a) applicable to that ESU. This rule intends to harmonize statutory conservation requirements with tribal rights and the Federal trust responsibility to tribes.

DATES: Comments on this rule must be received at the appropriate address (see **ADDRESSES**), no later than 5:00 p.m., eastern standard time, on March 3, 2000. Public hearings on this proposed action have been scheduled. See **SUPPLEMENTARY INFORMATION** for dates and times of public hearings.

ADDRESSES: Comments on this proposed rule or requests for information should be sent to Branch Chief, Protected Resources Division, NMFS, Northwest Region, 525 NE Oregon Street, Suite 500, Portland, OR 97232-2737. Comments will not be accepted if submitted via e-mail or Internet. See **SUPPLEMENTARY INFORMATION** for locations of public hearings.

FOR FURTHER INFORMATION CONTACT: Chris Mobley at (301) 713–1401; Garth Griffin at (206) 526-5006; or Craig Wingert at (562) 980-4021.

SUPPLEMENTARY INFORMATION:

Definitions

Indian Tribe - Any Indian tribe, band, nation, pueblo, community or other organized group within the United States which the Secretary of the Interior has identified on the most current list of federally recognized tribes maintained by the Bureau of Indian Affairs.

Tribal rights - Those rights legally accruing to a tribe or tribes by virtue of inherent sovereign authority, unextinguished aboriginal title, treaty, statute, judicial decisions, executive order or agreement, and which give rise to legally enforceable remedies.

Tribal trust resources - Those natural resources, either on or off Indian lands, retained by, or reserved by or for Indian tribes through treaties, statutes, judicial decisions, and executive orders, which are protected by fiduciary obligation on the part of the United States.

Purpose

The purpose of this proposed regulation is to provide a mechanism, consistent with both NMFS' obligation to conserve listed species, and with the Government's trust obligations to Indian tribes (tribes), through which NMFS may enable a tribe to conduct tribal trust resource management actions that may take threatened salmonids, without the risk of enforcement challenges that might be brought pursuant to take prohibitions adopted under ESA section 4(d). Existing and proposed section 4(d) regulations apply section 9 ''take'' prohibitions to all species listed by NMFS and U.S. Fish and Wildlife Service. The limit on take prohibitions would encompass a variety of types of Tribal Plans, including but not limited to, plans that address fishery harvest, artificial propagation, research, habitat or land management. Tribal Plans could be developed by one tribe or jointly with other tribes. Where there exists a Federal court proceeding with continuing jurisdiction over the subject matter of a Tribal Plan, the plan may be developed and implemented within the ongoing Federal court proceeding. In a **Federal Register** document proposing ESA section 4(d) regulations for Puget Sound Chinook and certain other threatened ESUs published today in a separate section of this **Federal Register** issue, NMFS describes the review process for plans developed jointly by tribes and states within the context of ongoing Federal Court proceedings.

Background

Pursuant to its obligations under section 4(d) of the ESA to issue regulations that are necessary and advisable for the conservation of threatened species, NMFS issued a final rule on April 22, 1992, that extended section 9(a) take prohibitions to threatened Snake River spring/summer chinook salmon and Snake River fall chinook salmon (57 FR 14653). Take prohibitions for CCC coho salmon were issued in a final rule on October 31, 1996 (61 FR 56138), and for SONCC coho salmon in an interim final rule on July 18, 1997 (62 FR 38479). NMFS extended generic ESA section 9 prohibitions, with limitations provided only for activities covered under section 10 of the ESA, to the Snake River chinook salmon and CCC coho salmon ESUs. The interim final rule for SONCC coho salmon applied the section 9(a) prohibitions against take to conserve SONCC coho salmon, with limitations for a small number of actions in Oregon and California (state research and monitoring activities, and certain habitat restoration, harvest, and artificial propagation activities) that were deemed sufficiently protective of SONCC coho that additional conservation through take prohibitions were not necessary.

This proposed rule would modify the existing take prohibitions by adding a limitation on take prohibitions for activities conducted in accord with a Tribal Plan that the Secretary determines, based on analysis of the impacts of the Tribal Plan on the biological requirements of the species, that the Tribal Plan and actions conducted pursuant to it will not appreciably reduce the likelihood of survival and recovery for the listed species.

Tribal activities have not been identified as major factors contributing to the decline of threatened species. NMFS believes that a Secretarial determination that implementation of a tribal resource plan will not appreciably reduce the likelihood of survival and recovery of an ESU is sufficient that additional Federal protections are not necessary and advisable for activities carried out under those plans. Thus, the existing 4(d) protections for threatened

ESUs will continue to constitute those necessary and advisable to provide for the conservation of the ESUs even with limits on take prohibitions as proposed in this rule. Likewise, the proposed steelhead and chinook 4(d) rules, as modified by this additional limit on take prohibitions, contain those protections that NMFS deems necessary and advisable for the conservation of the threatened ESUs.

Tribal Rights

The United States has a unique legal relationship with Indian tribes as set forth in the Constitution of the United States, treaties, statutes, executive orders, and court decisions. While Congress has plenary authority over tribes, the tribes remain sovereigns, possessing the authority to govern their lands and members within the boundaries of reservation lands. *Worcester* v. *Georgia*, 31 U.S. 515 (1832); see also *McClanahan* v. *Arizona State Tax Commission* 411 U.S. 164 (1973); *Santa Clara Pueblo* v. *Martinez* 436 U.S. 49 (1978). Indian tribes are regarded as ''domestic dependent nations'' and are owed a fiduciary duty of trust by the United States ''with moral obligations of the highest responsibility and trust.'' *Seminole Nation* v. *U.S.*, 316 U.S. 286, (1942); *U.S.* v. *Mitchell*, 463 U.S. 206 (1983). The trust responsibility requires the United States to employ a standard of ''due care'' in its oversight of tribal resources. *U.S.* v. *Creek Nation*, 295 U.S. 103 (1935). See also *Pyramid Lake Paiute Tribe* v. *Morton*, 354 F.Supp. 252 (D.D.C. 1972). The trust responsibility has both procedural and substantive components as articulated in the President's Memorandum on Government to Government Relations with Native American Tribal Governments, (59 FR 22951, April 29, 1994) and Executive Order 13084 of May 14, 1998, on Consultation and Coordination with Indian Tribal Governments, (63 FR 27655, May 19, 1998).

Native people all along the Pacific coast and throughout the Columbia and Snake River basins and the central valley of California have depended upon fish as their primary source of food and economy. For most of these indigenous cultures, the ''first salmon'' ceremony was an important religious festival and the many tribes engaged in religious rituals to ensure that the life cycle of the salmon, its migration from natal mountain streams to the sea and its return to spawn and die, would remain unbroken. The cultural importance of salmon to most tribes in the Pacific Northwest cannot be overstated. In signing treaties with the United States, most Indian tribes in the Pacific Northwest reserved their ''right of taking fish, at all usual and accustomed places and stations...in common with all citizens...'' The Supreme Court once stated that to these tribes the right to fish was ''not much less necessary to the existence of the Indians than the atmosphere they breathed.'' *U.S.* v. *Winans*, 198 U.S. 371, 381 (1905). The right to fish is reserved to many tribes by treaty, statute, and executive order.

The appropriate exercise of its trust obligation commits the United States to harmonize its many statutory responsibilities with the exercise of tribal sovereignty, tribal rights, and tribal self-determination. In fulfillment of the President's commitment, the Secretary of Commerce instructed all agencies of the Department of Commerce to commit to government-to-government relations with tribal governments (Memorandum of the Secretary, March 30, 1995). NMFS proposes this rule in recognition of the unique legal and political relationships between tribes and the United States, and in keeping with the trust responsibility to Indian tribes, treaty and Executive Order rights, and the President's Memorandum and Executive Order.

NMFS Obligations Under the ESA

Section (4)(d) of the ESA provides that the Secretary shall issue such regulations as deemed necessary and advisable to provide for the conservation of threatened species. Whether a protective regulation is necessary or advisable is, in large part, dependent upon the biological status of the species and potential impacts of various activities on the species.

For each of the threatened species that would be immediately affected by this proposed regulation, the Secretary has already adopted the ''take'' prohibitions of section 9 of the ESA throughout the species' range. The term ''take'' means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect (or attempt the above) any listed species. Land management activities could result in injury, harm or death of a listed salmonid. A fishery designed to harvest non-listed fish, no matter how carefully structured through season, gear, and other provisions, could, on occasion, result in injury, harm or death of a listed fish. A research plan may have as its objective the taking of listed fish. Some tribal fisheries are located or timed such that any fishery would take listed fish.

The Secretary administers the ESA within the context of the Federal trust responsibility, reserved tribal rights, and government-to-government relationships. Therefore, the purpose of this proposed rule is to establish a process that will enable the Secretary to meet the conservation needs of listed species while respecting tribal rights, values and needs.

Procedures

The proposed regulation recognizes and implements the commitment to government-to-government relations made by the President and the Secretary of Commerce. A tribe intending to exercise a tribal right to fish or undertake other resource management actions that may impact threatened salmonids could create a Tribal Plan that would assure that those actions would not appreciably reduce the likelihood of survival and recovery of the species.

The Secretary stands ready to provide technical assistance in examining impacts on listed salmonids and other salmonids to any tribe that so requests, as tribes develop Tribal Plans that meet tribal management responsibilities and needs. In making a determination whether a Tribal Plan will appreciably reduce the likelihood of survival and recovery of threatened salmonids, the Secretary, in consultation with the tribe, will use the best available biological data (including careful consideration of any tribal data and analysis) to determine the Tribal Plan's impact on the biological requirements of the species, and will assess the effect of the Tribal Plan on survival and recovery, consistent with the trust responsibilities and tribal rights described here.

Before making a determination, the Secretary will provide an opportunity for public comment on the question whether the Tribal Plan will affect the biological status of the species in a way that would appreciably reduce the likelihood of its survival and recovery. The Secretary shall publish notification of any determination regarding a Tribal Plan, with a discussion of the biological analysis underlying that determination, in the **Federal Register**.

Public Hearings

NMFS is soliciting comments, information, and/or recommendations on any aspect of this proposed rule from all concerned parties. (see DATES and ADDRESSES). Public hearings provide an additional opportunity for the public to give comments and to permit an exchange of information and opinion among interested parties. NMFS Northwest Region has, therefore, scheduled 15 public hearings throughout the Northwest to receive

public comment on this rule and other 4(d) rules proposed concurrently. Similarly, NMFS' Southwest Region will hold 7 hearings in California. The agency will consider all information, comments, and recommendations received before reaching a final decision on 4(d) protections for these ESUs.

Public Hearings in Washington, Idaho, and Oregon

(1) January 10, 2000, 6:00 - 9:00 p.m., Metro Regional Center, Council Chamber, 600 NE Grand Ave, Portland, Oregon;

(2) January 11, 2000, 6:00 - 9:00 p.m., Quality Inn, 3301 Market St NE, Salem, Oregon;

(3) January 12, 2000, 6:00 - 9:00 p.m., Lewiston Community Center, 1424 Main Street, Lewiston, Idaho;

(4) January 13, 2000, 6:00 - 9:00 p.m., Natural Resource Center, Bureau of Land Management, 1387 South Vinnell Way, Boise, Idaho;

(5) January 18, 2000, 6:00 - 9:00 p.m., City Library, 525 Anderson Ave., Coos Bay, Oregon;

(6) January 19, 2000, 6:00 - 9:00 p.m., Hatfield Science Center, 2030 SE Marine Science Drive, Newport, Oregon;

(7) January 20, 2000, 6:00 - 9:00 p.m., Columbia River Maritime Museum, 1792 Marine Drive, Astoria, Oregon;

(8) January 24, 2000, 6:00 - 9:00 p.m., Eugene Water & Electric Board Training Room, 500 East 4TH Ave. Eugene, Oregon;

(9) January 25, 2000, 6:00 - 9:00 p.m., City Hall, 2nd Floor Council Chamber, 500 SW Dorian Ave., Pendleton, Oregon;

(10) January 26, 2000, 6:00 - 9:00 p.m., Yakima County Courthouse, Room 420, 128 North 2nd St., Yakima, Washington

(11) January 27, 2000, 6:00 - 9:00 p.m., Mid Columbia Senior Center, John Day Room, 1112 West 9th, The Dalles, Oregon;

(12) January 31, 2000, 6:00 - 9:00 p.m., City Hall, Dining Room (Basement), 904 6th St., Anacortes, Washington;

(13) February 1, 2000, 6:00 - 9:00 p.m., Northwest Fisheries Science Center Auditorium, 2725 Montlake Blvd. East, Seattle, Washington;

(14) February 2, 2000, 6:00 - 9:00 p.m., City Hall, Council Chamber, 321 E. 5th, Port Angeles Washington;

(15) February 3, 2000, 6:00 - 9:00 p.m., Sawyer Hall, 510 Desmond Drive, Lacey, Washington;

Public Hearings in California

(1) January 25, 2000, 6:30 - 9:00 p.m., Double Tree (now Red Lion), 1830 Hilltop Drive, Redding, California;

(2) January 26, 2000, 6:30 - 9:00 p.m., Heritage Hotel, 1780 Tribute Rd., Sacramento, California

(3) January 27, 2000, 6:30 - 9:00 p.m., Modesto Irrigation District, 1231 11th St., Modesto, California;

(4) January 31, 2000, 6:30 - 9:00 p.m., Eureka Inn, 518 Seventh St., Eureka, California;

(5) February 1, 2000, 6:30 - 9:00 p.m., Double Tree, One Double Tree Drive, Rohnert Park, California;

(6) February 2, 2000, 6:30 - 9:00 p.m., Best Western, 2600 Sand Dunes Drive, Monterey, California;

(7) February 3, 2000, 7:00 - 9:30 p.m., Embassy Suites, 333 Madonna Rd., San Luis Obispo, California. 7:00-9:30P

Special Accomodations

These hearings are physically accessible to people with disabilities. Requests for sign language interpretation or other aids should be directed to Garth Griffin or Craig Wingert (see **ADDRESSES**) 7 days prior to each meeting date.

Classification

The Chief Counsel for Regulation of the Department of Commerce has certified that this proposed rule would not have a significant economic impact on a substantial number of small entities as described in the Regulatory Flexibility Act. Therefore, a regulatory flexibility analysis is not required.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

Executive Order 13084 - Consultation with Indian Tribal Governments

The United States has a unique relationship with tribal governments as set forth in the Constitution, treaties, statutes, and Executive Orders. In keeping with this unique relationship, with the mandates of the Presidential Memorandum on Government to Government Relations With Native American Tribal Governments (59 FR 22951), and with Executive Order 13084, NMFS has developed this proposed rule in close coordination with tribal governments and organizations. This proposal reflects many of the suggestions brought forth by tribal representatives during that process.

NMFS' coordination during development of this tribal rule has included meetings with tribes and tribal organizations, and individual staff-to-staff conversations. NMFS will schedule more formal consultation opportunities with each potentially affected tribe, to be completed during the first 2 months after publication of this document. Moreover, NMFS will continue to give careful consideration to all written or oral comments received and will continue its contacts and discussions with interested tribes as we move toward a final rule.

Paperwork Reduction Act

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

This proposed rule contains a collection-of-information requirement subject to review and approval by OMB under the PRA. This requirement has been submitted to OMB for approval. Public reporting burden for this collection of information is estimated to average 20 hours per response for tribes that elect to provide a tribal resource management plan that the Secretary may determine will not appreciably reduce the likelihood of survival and recovery of the species. This estimate includes any time required for reproducing, transmitting, and describing the content of the resource management plan.

Public comment is sought regarding whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to NMFS (see **ADDRESSES**), and to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC. 20503 (Attention: NOAA Desk Officer). Comments must be received by March 3, 2000.

NMFS will comply with the National Environmental Policy Act (NEPA) of 1969. NMFS is currently working on the necessary NEPA documentation and will publish notification of its decision under NEPA prior to issuance of the final rule.

List of Subjects in 50 CFR Part 223

Endangered and threatened species, Exports, Fish, Fisheries, Imports, Indians, Intergovernmental relations, Marine mammals, Treaties

Dated: December 22, 1999.

Penelope D. Dalton,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 223 is proposed to be amended as follows:

PART 223—THREATENED MARINE AND ANADROMOUS SPECIES

1. The authority citation for part 223 is revised to read as follows:

Authority: 16 U.S.C. 1531–1543; subpart B, § 223.12 also issued under 16 U.S.C. 1361 *et seq*.

2. Section 223.209 is added to read as follows:

§ 223.209 Tribal plans.

(a) *Prohibitions*. The prohibitions of section 9 of the ESA (16 U.S.C. 1538) relating to endangered species apply to the threatened species of salmon listed in § 223.102(a), except as provided in paragraph (b) of this section.

(b) *Limits on the take prohibitions*.

(1) The prohibitions of paragraph (a) of this section relating to threatened species of salmonids listed in § 223.102 do not apply to any activity undertaken by a tribe, tribal member, tribal permittee, or tribal agent in compliance with a Tribal resource management plan (Tribal Plan), provided that:

(i) The Secretary determines that implementation of such Tribal Plan will not appreciably reduce the likelihood of survival and recovery of the listed salmonids. In making that determination the Secretary shall use the best available biological data to determine the Tribal Plan's impact on the biological requirements of the species, and will assess the effect of the Tribal Plan on survival and recovery, consistent with legally enforceable tribal rights and with the Secretary's trust responsibilities to tribes;

(ii) A Tribal Plan may include but is not limited to plans that address fishery harvest, artificial production, research, habitat, or land management, and may be developed by one tribe or jointly with other tribes. The Secretary will consult on a government-to-government basis with any tribe that so requests, to provide technical assistance in examining impacts on listed salmonids and other salmonids as tribes develop Tribal resource management plans that meet the management responsibilities and needs of the tribes. A Tribal Plan must specify the procedures by which the tribe will enforce its provisions;

(iii) Where there exists a Federal court proceeding with continuing jurisdiction over the subject matter of a Tribal Plan, the plan may be developed and implemented within the ongoing Federal Court proceeding. In such circumstances, compliance with the Tribal Plan's terms shall be determined within that Federal Court proceeding;

(iv) The Secretary shall seek comment from the public on the Secretary's pending determination whether or not implementation of a Tribal Plan will appreciably reduce the likelihood of survival and recovery of the listed salmonids; and

(v) The Secretary shall publish notification in the *Federal Register* of any determination regarding a Tribal Plan and the basis for that determination.

(2) [Reserved]

[FR Doc. 99–33857 Filed 12–30–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 226

[I.D. 110599D]

RIN 0648–AL82

Designated Critical Habitat: Reproposed Critical Habitat for Johnson's Seagrass; Extension of Public Comment Period

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

ACTION: Proposed rule; extension of public comment period.

SUMMARY: NMFS is extending the public comment period on the reproposed rule to designate critical habitat for Johnson's seagrass (*Halophila johnsonii*).

DATES: The public comment period, which would otherwise close on January 3, 2000, has been extended and now closes on February 2, 2000.

ADDRESSES: Written comments and materials regarding the proposed rule should be directed to Mr. Charles Oravetz, Assistant Regional Administrator, Protected Resources Division, NMFS, Southeast Regional Office, 9721 Executive Center Drive North, St. Petersburg, Florida 33702–2432. Comments will not be accepted if submitted via e-mail or Internet.

FOR FURTHER INFORMATION CONTACT: Layne Bolen, Panama City Laboratory, Protected Resources Division, NMFS, 850–234–6541 ext. 237, layne.bolen@noaa.gov or Marta Nammack, Office of Protected Resources, NMFS, 301–713–1401, marta.nammack@noaa.gov.

SUPPLEMENTARY INFORMATION: On December 2, 1999, NMFS published a reproposed rule to designate critical habitat for Johnson's seagrass under the Endangered Species Act (64 FR 67536). Public comments were solicited, a public hearing was announced, and the comment period was set to expire on January 3, 2000. NMFS is extending the public comment period to end on February 2, 2000, in order to provide at least 60 days for public comment following publication in the **Federal Register**.

Dated: December 23, 1999.

Ann Terbush,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 99–34064 Filed 12–30–99; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 65, No. 1
Monday, January 3, 2000

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Announcement of the Market Access Program for Fiscal Year 2000

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice.

SUMMARY: This notice announces the availability of funds for the Fiscal Year 2000 Market Access Program (MAP).

DATES: All applications must be received by 5:00 p.m. Eastern Standard Time, March 13, 2000.

FOR FURTHER INFORMATION CONTACT: Marketing Operations Staff, Foreign Agricultural Service, U.S. Department of Agriculture, STOP 1042, 1400 Independence Ave., SW., Washington, DC 20250, (202) 720–4327.

SUPPLEMENTARY INFORMATION:

Introduction

The Commodity Credit Corporation (CCC) announces that applications are being accepted for participation in the Fiscal Year 2000 MAP. The MAP is designed to create, expand, and maintain foreign markets for United States agricultural commodities and products through cost-share assistance. Financial assistance under the MAP will be made available on a competitive basis and applications will be reviewed against the evaluation criteria contained herein. The MAP is administered by personnel of the Foreign Agricultural Service (FAS).

Under the MAP, CCC enters into agreements with eligible participants to share the costs of certain overseas marketing and promotion activities. MAP participants may receive assistance for either generic or brand promotion activities. The program generally operates on a reimbursement basis.

Authority

The MAP is authorized under section 203 of the Agricultural Trade Act of 1978, as amended, and MAP regulations appear at 7 CFR part 1485.

Eligible Applicants

To participate in the MAP, an applicant must be: A nonprofit U.S. agricultural trade organization, a nonprofit state regional trade group (i.e., an association of State Departments of Agriculture), a U.S. agricultural cooperative, a State agency, or a small-sized U.S. commercial entity (other than a cooperative or producer association).

Available Funds

$90 million of cost-share assistance may be obligated under this announcement to eligible MAP applicants.

Application Process

To be considered for the MAP, an applicant must submit to FAS information required by the MAP regulations set forth in 7 CFR part 1485. Incomplete applications and applications that do not otherwise conform to this announcement will not be accepted for review.

We also point out that FAS administers various other agricultural export assistance programs, including the Foreign Market Development Cooperator (Cooperator) program, Cochran Fellowships, the Emerging Markets Program, the Quality Samples Program, Section 108 foreign currency program, and several Export Credit Guarantee programs. Organizations which are interested in applying for MAP funds are encouraged to submit their requests using the Unified Export Strategy (UES) format. This allows interested entities to submit a consolidated and strategically coordinated single proposal that incorporates requests for funding and recommendations for virtually all FAS marketing programs, financial assistance programs, and market access programs. The suggested UES format encourages applicants to examine the constraints or barriers to trade they face, identify activities which would help overcome such impediments, consider the entire pool of complementary marketing tools and program resources, and establish realistic export goals. Applicants are not required, however, to use the UES format.

Organizations can submit applications in the UES format by two methods. The first allows an applicant to submit information directly to FAS through data entry screens at a specially designed UES application Internet site. FAS highly recommends applying via the Internet, as this format virtually eliminates paperwork and expedites the FAS processing and review cycle. Also, by using the Internet, applicants currently participating in the 1999 MAP will not need to enter historical information as it will appear automatically in the data entry screens. Applicants also have the option of submitting electronic versions (along with two paper copies) of their applications to FAS on diskette.

Applicants planning to use the Internet-based system must contact the Marketing Operations Staff of FAS at (202) 720–4327 to obtain site access information. The Internet-based application, including step-by-step instructions for its use, is located at the following URL address: http://www.fas.usda.gov/cooperators.html.

Applicants who choose to submit applications on diskette can download the UES handbook, including the suggested application format and instructions, from the following URL address: http://www.fas.usda.gov/mos/ues/unified.html. A UES handbook may also be obtained by contacting the Marketing Operations Staff at (202) 720–4327.

All MAP applicants, whether or not applying via the Internet or diskette, must also submit by March 13, 2000, via hand delivery or U.S. mail, an original signed certification statement as specified in 7 CFR 1485.13(a)(2)(i)(G). The UES handbook contains an acceptable certification format.

Any organization which is not interested in applying for the MAP or the Cooperator program but would like to request assistance through one of the other programs mentioned, should contact the Marketing Operations Staff at (202) 720–4327.

Review Process and Allocation Criteria

FAS allocates funds in a manner that effectively supports the strategic decision-making initiatives of the Government Performance and Results Act (GPRA) of 1993. In deciding whether a proposed project will

contribute to the effective creation, expansion, or maintenance of foreign markets, FAS seeks to identify a clear, long-term agricultural trade strategy by market or product and a program effectiveness time line against which results can be measured at specific intervals using quantifiable product or country goals. These performance indicators are part of FAS' resource allocation strategy to fund applicants which can demonstrate performance based on a long-term strategic plan and address the performance measurement objectives of the GPRA.

Following is a description of the FAS process for reviewing applications and the criteria for allocating available MAP funds.

(1) Phase 1—Sufficiency Committee and FAS Divisional Review

Applications received by the closing date will be reviewed by FAS to determine the eligibility of the applicants and the completeness of the applications. These requirements appear at § 1485.12 and § 1485.13 of the MAP regulations. Applications which meet the application requirements will then be further evaluated by the applicable FAS Commodity Division. The Divisions will review each application against the criteria listed in § 1485.14 of the MAP regulations. The purpose of this review is to identify meritorious proposals and to recommend an appropriate funding level for each application based upon these criteria.

(2) Phase 2—Competitive Review

Meritorious applications will then be passed on to the office of the Deputy Administrator, Commodity and Marketing Programs, for the purpose of allocating available funds among the applicants. Applications which pass the Divisional Review will compete for funds on the basis of the following evaluation criteria (the number in parentheses represents a percentage weight factor):

(a) Applicant's Contribution Level (40)

- The applicant's 4-year average share (1997–2000) of all contributions (cash and goods and services provided by U.S. entities in support of overseas marketing and promotion activities) compared to
- The applicant's 4-year average share (1997–2000) of the funding level for all MAP participants.

(b) Past Performance (30)

- The 3-year average share (1997–99) of the value of exports promoted by the applicant compared to
- The applicant's 2-year average share (1998–99) of the funding level for all MAP applicants plus, for those groups participating in the Cooperator program, the 2-year average share (1999–2000) of Cooperator marketing plan budgets and the 2-year average share (1998–99) of foreign overhead provided for co-location within a U.S. agricultural office;

(c) Projected Export Goals (15)

The total dollar value of projected exports promoted by the applicant for 2000 compared to

- The applicant's requested funding level;

(d) Accuracy of Past Projections (15)

- Actual exports for 1998 as reported in the 2000 MAP application compared to
- Past projections of exports for 1998 as specified in the 1998 MAP application.

The Commodity Divisions' recommended funding level for each applicant is converted to a percentage of the total MAP funds available and multiplied by the total weight factor as described above to determine the amount of funds allocated to each applicant.

Closing Date for Applications

All Internet-based applications must be properly submitted by 5:00 p.m. Eastern Standard Time, March 13, 2000. Signed certification statements also must be received by that time at one of the addresses listed below.

All applications on diskette (with two accompanying paper copies and a signed certification statement) and any other applications must be received by 5:00 p.m. Eastern Standard Time, March 13, 2000, at one of the following addresses:

Hand Delivery (including FedEx, DHL, UPS, etc.): U.S. Department of Agriculture, Foreign Agricultural Service, Marketing Operations Staff, Room 4932–S, 1400 Independence Avenue, S.W., Washington, D.C. 20250–1042.

U.S. Postal Delivery: Marketing Operations Staff, STOP 1042, 1400 Independence Ave., SW, Washington, D.C. 20250–1042.

Dated: December 28, 1999.

Timothy J. Galvin,

Administrator, Foreign Agricultural Service, and Vice President, Commodity Credit Corporation.

[FR Doc. 99–34058 Filed 12–30–99; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Announcement of the Foreign Market Development Cooperator Program for Fiscal Year 2001

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice.

SUMMARY: This notice announces the availability of funds for the Fiscal Year 2001 Foreign Market Development Cooperator (Cooperator) Program.

DATES: All applications must be received by 5:00 p.m. Eastern Standard Time, March 13, 2000.

FOR FURTHER INFORMATION CONTACT: Marketing Operations Staff, Foreign Agricultural Service, U.S. Department of Agriculture, STOP 1042, 1400 Independence Ave., SW., Washington, DC 20250, (202) 720–4327.

SUPPLEMENTARY INFORMATION:

Introduction

The Foreign Agricultural Service (FAS) announces that applications are being accepted for participation in the Fiscal Year 2001 Cooperator program. The program is designed to create, expand, and maintain foreign markets for United States agricultural commodities and products through cost-share assistance. Financial assistance under the Cooperator program will be made available on a competitive basis and applications will be reviewed against the evaluation criteria contained herein. The Cooperator program is administered by personnel of FAS.

Under the Cooperator program, FAS enters into agreements with nonprofit U.S. trade organizations that have the broadest possible producer representation of the commodity being promoted and gives priority to those organizations that are nationwide in membership and scope. Cooperator program agreements involve the promotion of agricultural commodities on a generic basis and may not involve activities targeted directly toward consumers. The program generally operates on a reimbursement basis.

Authority

The Cooperator program is authorized by Title VII of the Agricultural Trade Act of 1978, 7 U.S.C. 5721, *et seq.* Cooperator program regulations appear at 7 CFR part 1550.

Eligible Applicants

To participate in the Cooperator program, an applicant must be a nonprofit U.S. agricultural trade organization.

Available Funds

$27.5 million may be obligated to eligible Cooperator program applicants.

Application Process

To be considered for the Cooperator program, an applicant must submit to FAS information required by the Cooperator program regulations set forth in 7 CFR part 1550. Incomplete applications and applications that do not otherwise conform to this announcement will not be accepted for review.

We also point out that FAS administers various other agricultural export assistance programs, including the Cooperator program, the Market Access Program (MAP), Cochran Fellowships, the Emerging Markets Program, the Quality Samples Program, Section 108 foreign currency program, and several Export Credit Guarantee programs. Organizations which are interested in applying for Cooperator program funds are encouraged to submit their requests using the Unified Export Strategy (UES) format. This allows interested entities to submit a consolidated and strategically coordinated single proposal that incorporates requests for funding and recommendations for virtually all FAS marketing programs, financial assistance programs, and market access programs. The suggested UES format encourages applicants to examine the constraints or barriers to trade they face, identify activities which would help overcome such impediments, consider the entire pool of complementary marketing tools and program resources, and establish realistic export goals. Applicants are not required, however, to use the UES format.

Organizations can submit applications in the UES format by two methods. The first allows an applicant to submit information directly to FAS through data entry screens at a specially designed UES application Internet site. FAS highly recommends applying via the Internet, as this format virtually eliminates paperwork and expedites the FAS processing and review cycle. Also, by using the Internet, applicants currently participating in the 2000 Cooperator program will not need to enter historical information as it will appear automatically in the data entry screens. Applicants also have the option of submitting electronic versions (along with two paper copies) of their applications to FAS on diskette.

Applicants planning to use the Internet-based system must contact the Marketing Operations Staff of FAS at (202) 720–4327 to obtain site access information. The Internet-based application, including step-by-step instructions for its use, is located at the following URL address: http://www.fas.usda.gov/cooperators.html.

Applicants who choose to submit applications on diskette can download the UES handbook, including the suggested application format and instructions, from the following URL address: http://www.fas.usda.gov/mos/ues/unified.html. A UES handbook may also be obtained by contacting the Marketing Operations Staff at (202) 720–4327.

All Cooperator program applicants, whether or not applying via the Internet or diskette, must also submit by March 13, 2000, via hand delivery or U.S. mail, an original signed certification statement as specified in 7 CFR section 1485.13(a)(2)(i)(G) and 7 CFR 1550.20(a)(14), respectively. The UES handbook contains an acceptable certification format.

Any organization which is not interested in applying for the Cooperator program or the MAP but would like to request assistance through one of the other programs mentioned, should contact the Marketing Operations Staff at (202) 720–4327.

Review Process and Allocation Criteria

FAS allocates funds in a manner that effectively supports the strategic decision-making initiatives of the Government Performance and Results Act (GPRA) of 1993. In deciding whether a proposed project will contribute to the effective creation, expansion, or maintenance of foreign markets, FAS seeks to identify a clear, long-term agricultural trade strategy by market or product and a program effectiveness time line against which results can be measured at specific intervals using quantifiable product or country goals. These performance indicators are part of FAS' resource allocation strategy to fund applicants which can demonstrate performance based on a long-term strategic plan and address the performance measurement objectives of the GPRA.

Following is a description of the FAS process for reviewing applications and the criteria for allocating available Cooperator program funds.

(1) Phase 1—Sufficiency Committee and FAS Divisional Review

Applications received by the closing date will be reviewed by FAS to determine the eligibility of the applicants and the completeness of the applications. These requirements appear at § 1550.14 and § 1550.20 of the Cooperator program regulations. Applications which meet the application requirements will then be further evaluated by the applicable FAS Commodity Division. The Divisions will review each application against the criteria listed in § 1550.21 and § 1550.22 of the Cooperator program regulations. The purpose of this review is to identify meritorious proposals and to recommend an appropriate funding level for each application based upon these criteria.

(2) Phase 2—Competitive Review

Meritorious applications will then be passed on to the office of the Deputy Administrator, Commodity and Marketing Programs, for the purpose of allocating available funds among the applicants. Applications which pass the Divisional Review will compete for funds on the basis of the following allocation criteria (the number in parentheses represents a percentage weight factor). Data used in the calculations for contribution levels, past export performance and past demand expansion performance will cover not more than a 6-year period, to the extent such data is available.

(a) Contribution Level (40)

- The applicant's 6-year average share (1996–2001) of all contributions (contributions may include cash and goods and services provided by U.S. entities in support of foreign market development activities) compared to
- The applicant's 6-year average share (1996–2001) of all Cooperator marketing plan budgets.

(b) Past Export Performance (20)

- The 6-year average share (1995–2000) of the value of exports promoted by the applicant compared to
- The applicant's 6-year average share (1995–2000) of all Cooperator marketing plan budgets plus a 6-year average share (1994–1999) of MAP program ceiling levels and a 6-year average share (1994–99) of foreign overhead provided for co-location within a U.S. agricultural trade office.

(c) Past Demand Expansion Performance (20)

- The 6-year average share (1995–2000) of the total value of world trade of the commodities promoted by the applicant compared to
- The applicant's 6-year average share (1995–2000) of all Cooperator marketing plan budgets plus a 6-year average share (1994–99) of MAP program ceiling levels and a 6-year average share (1994–99) of foreign overhead provided for co-location within a U.S. agricultural trade office.

(d) Future Demand Expansion Goals (10)

• The projected total dollar value of world trade of the commodities being promoted by the applicant for the year 2006 compared to

• The applicant's requested funding level.

(e) Accuracy of Past Demand Expansion Projections (10)

• The actual dollar value share of world trade of the commodities being promoted by the applicant for the year 1999 compared to

• The applicant's past projected share of world trade of the commodities being promoted by the applicant for the year 1999, as specified in the 1999 Cooperator program application.

The Commodity Divisions' recommended funding level for each applicant is converted to a percentage of the total Cooperator program funds available and multiplied by the total weight factor to determine the amount of funds allocated to each applicant.

Closing Date for Applications

All Internet-based applications must be properly submitted by 5 p.m. Eastern Standard Time, March 13, 2000. Signed certification statements also must be received by that time at one of the addresses listed below.

All applications on diskette (with two accompanying paper copies and a signed certification statement) and any other applications must be received by 5 p.m. Eastern Standard Time, March 13, 2000, at one of the following addresses:

Hand Delivery (including FedEx, DHL, UPS, etc.): U.S. Department of Agriculture, Foreign Agricultural Service, Marketing Operations Staff, Room 4932–S, 1400 Independence Avenue, SW., Washington, DC 20250–1042.

U.S. Postal Delivery: Marketing Operations Staff, STOP 1042, 1400 Independence Ave., SW., Washington, DC 20250–1042.

Dated: December 28, 1999.

Timothy J. Galvin,

Administrator, Foreign Agricultural Service.

[FR Doc. 99–34057 Filed 12–30–99; 8:45 am]

BILLING CODE 3410–10–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to and deletions from the procurement list.

SUMMARY: This action adds to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes from the Procurement List commodities and a service previously furnished by such agencies.

EFFECTIVE DATE: February 2, 2000.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On August 20, November 15, and 19, 1999, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (64 FR 45506, 61819, and 63283) of proposed additions to and deletions from the Procurement List:

Additions

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the services and impact of the additions on the current or most recent contractors, the Committee has determined that the services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. The action will not have a severe economic impact on current contractors for the services.

3. The action will result in authorizing small entities to furnish the services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List.

Accordingly, the following services are hereby added to the Procurement List:

Grounds Maintenance, Naval Air Station, New Orleans, Louisiana

Janitorial/Custodial, New River Valley Memorial USARC, Dublin, Virginia

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Deletions

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action may not result in any additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action will not have a severe economic impact on future contractors for the commodities and service.

3. The action may result in authorizing small entities to furnish the commodities and service to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and service deleted from the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the commodities and service listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Accordingly, the following commodities and service are hereby deleted from the Procurement List:

Commodities

Ladder, Extension (Wood), 5440–00–223–6025

Broom, Upright, 7920–00–292–4370, 7920–00–292–2369

Service

Administrative Services, General Services Administration, PBS, Laguna Niguel Field Offices, Laguna Niguel, California

Beverly L. Milkman,

Executive Director.

[FR Doc. 99–34048 Filed 12–30–99; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to procurement list.

SUMMARY: The Committee has received a proposal to add to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: February 2, 2000.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

FOR FURTHER INFORMATION CONTACT: Beverely Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities. I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. The action will result in authorizing small entities to furnish the services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Operation of Individual Equipment Element Store and HAZMART, Dover Air Force Base, Delaware
NPA: Blind Industries & Services of Maryland, Balitmore, Maryland
Provision of Customized Recognition and Award Program (50% of the total Government Requirement)
NPA: The Lighthouse for the Blind, Inc., Seattle, Washington

Beverly L. Milkman,

Executive Director.

[FR Doc. 99–34049 Filed 12–30–99; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–853]

Notice of Preliminary Determination of Sales at Less Than Fair Value: Bulk Aspirin From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: January 3, 2000.

FOR FURTHER INFORMATION CONTACT: Blanche Ziv, Rosa Jeong or Ryan Langan, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–4207, (202) 482–3853, and (202) 482–1279, respectively.

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (''the Act''), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (''URAA''). In addition, unless otherwise indicated, all citations to the Department of Commerce (''Department'') regulations are to 19 CFR Part 351 (April 1, 1998).

Preliminary Determination

We preliminarily determine that bulk aspirin (''aspirin'') from the People's Republic of China (''PRC'') is being, or is likely to be, sold in the United States at less than fair value (''LTFV''), as provided in section 733 of the Act. The estimated margins of sales at LTFV are shown in the ''Suspension of Liquidation'' section of this notice.

Case History

Since the initiation of this investigation on June 23, 1999 (64 FR 33463) (''*Notice of Initiation*''), the following events have occurred:

On June 15, 1999, we received an entry of appearance by counsel on behalf of Jilin Pharmaceutical Co., Ltd. (''Jilin''), a producer/exporter of the subject merchandise. On June 16, 1999, we received an entry of appearance by counsel on behalf of Shandong Xinhua Pharmaceutical Factory (''Shandong''), a producer/exporter of the subject merchandise

On July 19, 1999, the United States International Trade Commission (''ITC'') notified the Department of its affirmative preliminary injury determination in this case.

On July 26, 1999, the Department issued an antidumping questionnaire to the Ministry of Foreign Trade and Economic Cooperation (''MOFTEC''), the Embassy of the PRC, and the China Chamber of Commerce for Medicine and Health with instructions to forward the questionnaire to all producers/exporters of the subject merchandise. Also on July 26, 1999, the Department issued the antidumping questionnaire to Jilin and Shandong.

On September 3, 1999, the Department invited interested parties to provide publicly available information for valuing the factors of production and to comment on the surrogate country selection. We received responses on October 4, 1999, and additional comments on October 8 and 12, 1999.

On August 24 and 30, and September 3 and 7, 1999, the Department received questionnaire responses from Jilin and Shandong. We issued supplemental questionnaires on September 10, 1999, to which we received responses on October 4, 1999.

On October 8, 1999, pursuant to section 733(c)(1)(A) of the Act, Rhodia, Inc., the petitioner, made a timely request to postpone the issuance of the preliminary determination in this investigation. We granted this request and, on October 21, 1999, we postponed the preliminary determination until no later than December 21, 1999 (*See* 64 FR 56738).

On December 1, 1999, the petitioner submitted additional surrogate value information and preliminary determination comments. On December 6, 1999, Jilin filed corrections to its reported factor data. In addition, between December 6 and 16, 1999, Jilin filed several submissions objecting to the petitioner's submission of new surrogate value information. Shandong provided clarifications to its reported factor data on December 6, 1999.

Scope of Investigation

For purposes of this investigation, the product covered is bulk acetylsalicylic acid, commonly referred to as bulk aspirin, whether or not in pharmaceutical or compound form, not put up in dosage form (tablet, capsule, powders or similar form for direct human consumption). Bulk aspirin may be imported in two forms, as pure ortho-acetylsalicylic acid or as mixed ortho-acetylsalicylic acid. Pure ortho-acetylsalicylic acid can be either in crystal form or granulated into a fine powder (pharmaceutical form). This product has the chemical formula $C_9H_8O_4$. It is defined by the official monograph of the United States Pharmacopoeia (''USP'') 23. It is classified under the Harmonized Tariff Schedule of the United States (''HTSUS'') subheading 2918.22.1000.

Mixed ortho-acetylsalicylic acid consists of ortho-acetylsalicylic acid combined with other inactive substances such as starch, lactose, cellulose, or coloring materials and/or other active substances. The presence of other active substances must be in concentrations less than that specified for particular nonprescription drug combinations of aspirin and active substances as published in the *Handbook of Nonprescription Drugs,* eighth edition, American Pharmaceutical Association. This product is classified under HTSUS subheading 3003.90.0000. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

Period of Investigation

The period of this investigation (''POI'') corresponds to each exporter's two most recent fiscal quarters prior to the filing of the petition, *i.e.,* October 1, 1998, through March 31, 1999.

Nonmarket Economy Country Status

The Department has treated the PRC as a nonmarket economy (''NME'') country in all past antidumping investigations (*see, e.g., Final Determination of Sales at Less Than Fair Value: Creatine Monohydrate from the People's Republic of China,* 64 FR 71104 (December 20, 1999) (*''Creatine''*) and *Final Determination of Sales at Less Than Fair Value: Certain Preserved Mushrooms from the People's Republic of China,* 63 FR 72255 (December 31, 1998) (''*Mushrooms*'')). A designation as an NME remains in effect until it is revoked by the Department (see section 771(18)(C) of the Act).

The respondents in this investigation have not requested a revocation of the PRC's NME status. We have, therefore, preliminarily determined to continue to treat the PRC as an NME.

Separate Rates

Both Jilin and Shandong have requested separate company-specific rates. These companies have stated that they are privately owned companies with no element of government ownership or control.

The Department's separate rate test is not concerned, in general, with macroeconomic/border-type controls, *e.g.,* export licenses, quotas, and minimum export prices, particularly if these controls are imposed to prevent dumping. The test focuses, rather, on controls over the investment, pricing, and output decision-making process at the individual firm level. See *Certain Cut-to-Length Carbon Steel Plate from Ukraine: Final Determination of Sales at Less than Fair Value,* 62 FR 61754, 61757 (November 19, 1997); *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of Antidumping Duty Administrative Review,* 62 FR 61276, 61279 (November 17, 1997); and *Honey from the People's Republic of China: Preliminary Determination of Sales at Less than Fair Value,* 60 FR 14725, 14726 (March 20, 1995) (''*Honey*'').

To establish whether a firm is sufficiently independent from government control to be entitled to a separate rate, the Department analyzes each exporting entity under a test arising out of the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China,* 56 FR 20588 (May 6, 1991) (''*Sparklers*''), as modified by *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China,* 59 FR 22585 (May 2, 1994) (''*Silicon Carbide*''). Under the separate rates criteria, the Department assigns separate rates in NME cases only if the respondents can demonstrate the absence of both *de jure* and *de facto* governmental control over export activities.

1. Absence of De Jure Control

The respondents have placed on the record a number of documents to demonstrate absence of *de jure* government control, including the ''Foreign Trade Law of the People's Republic of China'' and the ''Company Law of the People's Republic of China.''

The Department has analyzed these laws in prior cases and found that they establish an absence of *de jure* control. (*See, e.g., Final Determination of Sales at Less Than Fair Value: Certain Partial-Extension Steel Drawer Slides with Rollers from the People's Republic of China,* 60 FR 54472 (October 24, 1995); *see also Mushrooms*.) We have no new information in this proceeding which would cause us to reconsider this determination.

Accordingly, we preliminarily determine that, within the aspirin industry, there is an absence of *de jure* government control over export pricing and marketing decisions of firms.

2. Absence of De Facto Control

As stated in previous cases, there is some evidence that certain enactments of the PRC central government have not been implemented uniformly among different sectors and/or jurisdictions in the PRC. (*See, e.g., Sparklers* and *Silicon Carbide*) Therefore, the Department has determined that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of governmental control which would preclude the Department from assigning separate rates.

The Department typically considers four factors in evaluating whether each respondent is subject to *de facto* governmental control of its export functions: (1) Whether the export prices are set by, or subject to, the approval of a governmental authority; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of its management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses (*see Mushrooms*).

Shandong and Jilin have each asserted the following: (1) They establish their own export prices; (2) they negotiate contracts without guidance from any governmental entities or organizations; (3) they make their own personnel decisions; and (4) they retain the proceeds of their export sales and use profits according to their business needs without any restrictions. Additionally, these two respondents have stated that they do not coordinate or consult with other exporters regarding their pricing. This information supports a preliminary finding that there is no *de facto* governmental control of the export functions of these companies. Consequently, we preliminarily determine that both responding exporters have met the criteria for the application of separate rates.

We note that the petitioner has alleged that neither Jilin nor Shandong

is sufficiently independent from state control to justify the calculation of separate rates. The petitioner makes various arguments in support of its claim that the respondents do not have independence with respect to pricing authority. The petitioner cites, for example, the PRC government's control of essential raw materials used in the production of aspirin and the fact that shareholders of Jilin and Shandong were shareholders in the companies' state-owned predecessor companies. We have considered the petitioner's various arguments and find that they do not direct us to reject the respondents' claims that they are entitled to separate rates. As stated above, our separate rates test is not concerned with broad-based macroeconomic concerns, but rather focuses on controls over pricing and decision-making at the individual firm level. The petitioner's arguments do not address the company-specific, day-to-day operations of Jilin and Shandong which we consider in making a separate rates determination.

Use of Facts Available

PRC-Wide Rate

Information on the record of this investigation indicates that there may be producers/exporters of the subject merchandise in the PRC in addition to the companies participating in this investigation. Also, U.S. import statistics indicate that the total quantity of U.S. imports of aspirin from the PRC is greater than the total quantity of aspirin exported to the United States as reported by both PRC aspirin exporters that submitted responses in this investigation. Given this discrepancy, it appears that not all PRC exporters of aspirin responded to our questionnaire. Accordingly, we are applying a single antidumping deposit rate—the PRC-wide rate—to all exporters in the PRC, other than those specifically identified below in the ''Suspension of Liquidation'' section, based on our presumption that the export activities of the companies that failed to respond to the Department's questionnaire are controlled by the PRC government (*see, e.g., Bicycles from the PRC*).

The PRC-wide antidumping rate is based on adverse facts available. Section 776(a)(2) of the Act provides that

> if an interested party or any other person—(A) withholds information that has been requested by the administering authority or the Commission under this title, (B) fails to provide such information by the deadlines for submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782, (C) significantly impedes a proceeding under this title, or (D) provides such information but the information cannot be verified as provided in section 782(i), the administering authority and the Commission shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination under this title.

Only Jilin and Shandong have provided the information requested by the Department. Accordingly, the use of facts available is warranted with respect to all other PRC producers/exporters of aspirin.

Section 776(b) of the Act provides that adverse inferences may be used when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information. The exporters that decided not to respond in any form to the Department's questionnaire failed to act to the best of their ability in this investigation. Thus, the Department has determined that, in selecting from among the facts otherwise available, an adverse inference is warranted. As adverse facts available, we are assigning the highest margin in the petition, 144.02 percent, which is higher than any of the calculated margins.

Section 776(c) of the Act provides that where the Department selects from among the facts otherwise available and relies on ''secondary information,'' such as the petition, the Department shall, to the extent practicable, corroborate that information from independent sources reasonably at the Department's disposal. The Statement of Administrative Action accompanying the URAA, H.R. Doc. No. 103–316 (1994) (SAA), states that ''corroborate'' means to determine that the information used has probative value. *See* SAA at 870.

The petitioner's methodology for calculating export price (''EP'') and normal value (''NV'') is discussed in the *Notice of Initiation.* To corroborate the petitioner's EP calculations, we compared the prices in the petition for the product to the prices submitted by respondents for the same product in similar volumes. To corroborate the petitioner's NV calculations, we compared the petitioner's factor consumption and surrogate value data for the product to the data reported by the respondents for the most significant factors—chemical inputs, factory overhead, and selling, general, and administrative expenses (''SG&A'')—and the surrogate values for these factors in the petition to the values selected for the preliminary determination, as discussed below. Our analysis showed that, in general, the petitioner's data was reasonably close to the data submitted by the respondents and to the surrogate values chosen by the Department. (*See* memorandum to the file dated December 21, 1999 (''Corroboration Memo'').) Based on our analysis, we find that the figures and calculations set forth in the petition have probative value.

Fair Value Comparisons

To determine whether sales of the subject merchandise by Shandong and Jilin to the United States were made at LTFV, we compared the EP or constructed export price (''CEP'') to the NV, as described in the ''Export Price'' and ''Normal Value'' sections of this notice, below. In accordance with section 777A(d)(1)(A)(i) of the Act, we compared POI-wide weighted-average EPs and CEPs to NVs.

Export Price

For all sales made by Shandong and certain sales by Jilin, we used the EP methodology in accordance with section 772(a) of the Act, because the subject merchandise was sold directly to unaffiliated customers in the United States prior to importation and CEP methodology was not otherwise appropriate. We calculated EP based on packed FOB, CIF or C&F prices to the first unaffiliated purchaser in the United States. Where appropriate, we made deductions from the starting price (gross unit price) for inland freight from the plant/warehouse to port of exit, brokerage and handling in the PRC, marine insurance and ocean freight. Because certain domestic brokerage and handling, marine insurance, and inland freight were provided by NME companies, we based those charges on surrogate rates from India. (*See* ''Normal Value'' section for further discussion.)

Constructed Export Price

For certain sales by Jilin, we calculated CEP, in accordance with sections 772(b), (c) and (d) of the Act, because sales to the first unaffiliated purchaser in the United States took place after importation. We calculated CEP based on ex-dock, ex-warehouse, CIF or delivered prices to unaffiliated purchasers in the United States. Where appropriate, we made deductions for inland freight in the PRC, brokerage and handling in the PRC, ocean freight, marine insurance, U.S. duty, U.S. inland freight, U.S. brokerage and handling, and U.S. warehousing. Because certain domestic brokerage and handling, marine insurance, and inland freight were provided by NME companies, we based those charges on surrogate rates from India. (*See* ''Normal Value'' section for further discussion.) Also, where appropriate, we deducted direct and indirect selling expenses related to commercial activity in the United

States. Pursuant to section 772(d)(3) of the Act, where applicable, we made an adjustment for CEP profit.

Normal Value

1. Surrogate Country

Section 773(c)(4) of the Act requires the Department to value the NME producer's factors of production, to the extent possible, in one or more market economy countries that: (1) Are at a level of economic development comparable to that of the NME, and (2) are significant producers of comparable merchandise. The Department has determined that India, Pakistan, Sri Lanka, Egypt, Indonesia, and the Philippines are countries comparable to the PRC in terms of overall economic development (*see* memorandum from Jeff May, Director, Office of Policy, to Susan Kuhbach, Senior Director, AD/CVD Enforcement, Office 1, July 13, 1999). We have further determined that India is a significant producer of comparable merchandise. Accordingly, we have calculated NV using mainly Indian values, and in some cases U.S. export values, for the PRC producers' factors of production. Where it was applicable and practicable, we have considered all information on the record, including data provided in the petitioner's December 1, 1999, comments.

2. Factors of Production

In accordance with section 773(c) of the Act, we calculated NV based on factors of production reported by the companies in the PRC which produced aspirin and sold aspirin to the United States during the POI. Our NV calculation included amounts for materials, labor, energy, overhead, SG&A, and profit. To calculate NV, the reported unit factor quantities were multiplied by publicly available Indian and U.S. export price values.

In selecting the surrogate values, we considered the quality, specificity, and contemporaneity of the data. As appropriate, we adjusted input prices to make them delivered prices. Where the distance between the material supplier and the factory was reported, we added to Indian CIF surrogate values a surrogate freight cost using the shorter of the reported distances from either the closest PRC port to the PRC factory, or from the domestic supplier to the factory. This adjustment is in accordance with the CAFC's decision in *Sigma Corp.* v. *United States,* 117 F. 3d 1401 (Fed. Cir. 1997). Where a producer did not report the distances between the material supplier and the factory, as facts available, we used the distance to the nearest PRC port to the PRC factory. For those values not contemporaneous with the POI and quoted in a foreign currency, we adjusted for inflation using wholesale price indices published in the International Monetary Fund's *International Financial Statistics.*

(1) *Material Inputs:* To value acetic acid, sulfuric acid, and certain other inputs, we used public information from the Indian publication *Indian Chemical Weekly* (''ICW'') that corresponded with the POI. For caustic soda, ethyl phosphate, ammonia, corn starch, and certain other inputs, we relied on import prices contained in *Monthly Statistics of the Foreign Trade of India* (''MSFTI''). Phenol was valued using both ICW and MSFTI data. To value carbon dioxide, we used data from 1998 U.S. Census Bureau Export Statistics. We used a U.S. export value for this input because the value reported in the MSFTI was aberrational. For further discussion, see ''Factors of Production Valuation Memorandum'' dated December 21, 1999.

(2) *Labor:* We valued labor using the method described in 19 CFR § 351.408(c)(3).

(3) *Energy:* To value electricity, coal and fuel oil, we used the rates reported in the publication *Energy Prices and Taxes* (1998).

(4) *Overhead, SG&A and Profit:* We based factory overhead, SG&A, and profit on financial information relating to the Indian ''drugs and pharmaceuticals'' industry, as reported by the *Indian Informer.*

(5) *Inland Freight:* To value truck freight rates, we used price quotes obtained by the Department from Indian truck freight companies in November 1999. With regard to rail freight, we based our calculation on price quotes obtained by the Department from an Indian rail freight company in November 1999.

(6) *Packing Materials:* For packing materials, we used import values from the MSFTI.

(7) *Brokerage and Handling:* To value foreign brokerage and handling, we relied on public information reported in the case record for a new shipper review of stainless wire rod from India. *See Certain Stainless Steel Wire Rod From India; Preliminary Results of Antidumping Duty Administrative and New Shipper Reviews,* 63 FR 48184 (Sept. 9, 1998).

(8) *Marine Insurance:* For marine insurance, we used public information collected for *Tapered Roller Bearing and Parts Thereof, Finished and Unfinished, from the PRC; Final Results of 1996–1997 Antidumping Administrative Review,* 63 FR 63842, 63847 (Nov. 17, 1998) (*''TRBs–10''*), which was obtained through queries made directly to an international marine insurance provider.

(9) *Ocean Freight:* Where the PRC producer/exporter used a market economy shipper and paid for the shipping in a market economy currency, we used the amount reported. Where the producer/exporter also reported that freight services were provided by a nonmarket economy carrier and/or paid for in nonmarket economy currency, we used an average of the market economy values as the factor value.

Verification

As provided in section 782(i) of the Act, we will verify all information relied upon in making our final determination.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the Customs Service to suspend liquidation of all imports of subject merchandise from the PRC, except for subject merchandise produced and exported by Jilin (which has a zero weighted-average margin), that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We will instruct the Customs Service to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the EP or CEP, as indicated in the chart below. These suspension of liquidation instructions will remain in effect until further notice.

Exporter/manufacturer	Weighted-average margin percentage
Shandong Xinhua Pharmaceutical Factory	11.14
Jilin Pharmaceutical Co., Ltd./ Jilin Pharmaceutical Import and Export Corporation	0.00
PRC-wide Rate	144.02

The PRC-wide rate applies to all entries of the subject merchandise except for entries from exporters/producers that are identified individually above.

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

Public Comment

Case briefs or other written comments in six copies must be submitted to the Assistant Secretary for Import Administration no later than February 18, 2000, and rebuttal briefs no later than February 23, 2000. A list of authorities used and an executive summary of issues should accompany any briefs submitted to the Department. Such summary should be limited to five pages total, including footnotes. In accordance with section 774 of the Act, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, the hearing will be held on February 25, 2000, at the Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs. If this investigation proceeds normally, we will make our final determination not later than 75 days after the date of the preliminary determination.

This determination is issued and published in accordance with sections 733(d) and 777(i)(1) of the Act.

Dated: December 21, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–33962 Filed 12–30–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[ID 112499A]

International Whaling Commission; Meetings

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

ACTION: Notice of public meetings.

SUMMARY: NOAA makes use of a public Interagency Committee to assist in preparing for meetings of the International Whaling Commission (IWC). This notice sets forth guidelines for participating on the Committee and a tentative schedule of meetings and of important dates.

DATES: The January 14, 2000, Interagency Meeting will be held at 2:00 p.m. See **SUPPLEMENTARY INFORMATION** for tentative 2000 meeting schedules.

ADDRESSES: The January 14, 2000, meeting will be held in Room 1W611 on the ground floor of Building 4 in the NOAA Silver Spring Metro Complex, 1305 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Cathy Campbell, (202) 482–2652.

SUPPLEMENTARY INFORMATION: The January 14, 2000, Interagency Committee meeting will review recent events relating to the IWC and issues that will arise at the 2000 IWC annual meeting.

The Secretary of Commerce is charged with the responsibility of discharging the obligations of the United States under the International Convention for the Regulation of Whaling, 1946. This authority has been delegated to the Under Secretary for Oceans and Atmosphere, who is also the U.S. Commissioner to the IWC. The U.S. Commissioner has primary responsibility for the preparation and negotiation of U.S. positions on international issues concerning whaling and for all matters involving the IWC. He is staffed by the Department of Commerce and assisted by the Department of State, the Department of the Interior, the Marine Mammal Commission, and by other interested agencies.

Each year, NOAA conducts meetings and other activities to prepare for the annual meeting of the IWC. The major purpose of the preparatory meetings is to provide input in the development of policy by individuals and non-governmental organizations interested in whale conservation. NOAA believes that this participation is important for the effective development and implementation of U.S. policy concerning whaling. Any person with an identifiable interest in United States whale conservation policy may participate in the meetings, but NOAA reserves the authority to inquire about the interest of any person who appears at a meeting and to determine the appropriateness of that person's participation. Foreign nationals and persons who represent foreign governments may not attend. These stringent measures are necessary to promote the candid exchange of information and to establish the necessary basis for the relatively open process of preparing for IWC meetings that characterizes current practices.

Tentative Meeting Schedule

The schedule of additional meetings and deadlines, including those of the IWC, during 2000 follows. Specific locations and times will be published in the **Federal Register**.

January 14, 2000 (NOAA, Silver Spring Metro Complex, Building 4, Room 1W611, Silver Spring, MD): Interagency Committee meeting to review recent events relating to the IWC and to review U.S. positions for the 2000 IWC annual meeting.

June 12–13, 2000 (Australia): IWC Scientific Committee Working Groups and Sub-committees.

June 14–26, 2000 (Australia): IWC Scientific Committee.

June 28 - July 1, 2000 (Australia): IWC Commission Committees, Sub-committees and Working Groups.

July 3–6, 2000 (Australia): IWC 52nd Annual Meeting.

Special Accommodations

Department of Commerce meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Cathy Campbell (see **FOR FURTHER INFORMATION CONTACT**) at least 5 days prior to the meeting date.

Dated: December 22, 1999.

Art Jeffers,

Deputy Director, Protected Resources, National Marine Fisheries Service.

[FR Doc. 99–34083 Filed 12–30–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF DEFENSE

Office of the Secretary

Proposed Information Collection Available for Public Comment

AGENCY: Office of the Under Secretary of Defense (Personnel and Readiness).

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Under Secretary of Defense (Personnel and Readiness) announces the following proposed reinstatement of a public information collection 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 shall have

practical utility; (b) the accuracy of the agency's estimate of 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 through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by March 3, 2000.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to the Office of the Under Secretary of Defense (Personnel and Readiness) (Force Management Policy/Military Personnel Policy/Accession Policy), ATTN: LTC Helen Prewitt, Room 2B271, 4000 Defense Pentagon, Washington, DC 20301–4000. Consideration will be given to all comments received within 60 days of the date of publication of this notice.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address or call (703) 697–9269.

Title, Applicable, and OMB Control Number: DoD Loan Repayment Program (LRP); DD Form 2475; OMB Control Number 0704–0152.

Needs and Uses: Military Services are authorized to repay student loans for individuals who meet certain criteria and who enlist for active military service or enter Reserve service for a specified obligation period. Applicants who qualify for the program forward the DD Form 2475, ''DoD Educational Loan Repayment Program (LRP) Annual Application,'' to their Military Service Personnel Office for processing. The Military Service Personnel Office verifies the information and fills in the loan repayment date, address and phone number. For the Reserve Components, the Military Service Personnel Office forwards the DD Form 2475 to the lending institution. For the active-duty Service, the Service member mails the form to the lending institution. The lending institution confirms the loan status and certification and mails the form back to the Military Service Personnel Office.

Affected Public: Business or other for-profit.

Annual Burden Hours (Including Recordkeeping): 6,750 hours.

Number of Respondents: 27,000.

Responses Per Respondent: 1.

Average Burden Per Response: 15 minutes.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

Public Laws 99–145 and 100–180 authorize the Military Services to repay student loans for individuals who agree to enter the military in specific occupational areas for a specified service obligation period. The law provides for repayment for service performed on active duty or as a member of the Reserve Components in a military specialty determined by the Secretary of Defense. The legislation requires the Services to verify the status of the individual's loan prior to repayment. The DD Form 2475, ''DoD Educational Loan Repayment Program (LRP) Annual Application,'' is used to collect the necessary verification data from the lending institution.

To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address or call the Office of the Under Secretary of Defense (Personnel and Readiness) Reports Clearance Officer at (703) 614–8989.

Dated: December 27, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–34000 Filed 12–30–99; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the United States Commission on National Security/21st Century

AGENCY: Department of Defense, Office of the Undersecretary of Defense (Policy).

ACTION: Notice of closed meeting.

SUMMARY: The United States Commission on National Security/21st Century will meet in closed session on 10 and 11 January 2000. The Commission was originally chartered by the Secretary of Defense on 1 July 1998 (charter revised on 18 August 1999) to conduct a comprehensive review of the early twenty-first century global security environment; develop appropriate national security objectives and a strategy to attain these objectives; and recommend concomitant changes to the national security apparatus as necessary.

The Commission will meet in closed session on 10 and 11 January to review a range of option papers developed by the staff and write portions of the Phase Two report. In addition, the Commission will discuss selected classified national security documents for comparative use as it develops Sections I through V of its draft report. By Charter, the Phase Two report is to be delivered to the Secretary of Defense no later than 14 April 2000.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended [5 U.S.C., Appendix II], it is anticipated that matters affecting national security, as covered by 5 U.S.C. 552b(c)(1)(1988), will be presented throughout the meeting, and that, accordingly, the meeting will be closed to the public.

DATES: Monday, 10 January 8:30 a.m.–5:00 p.m. Tuesday, 11 January 8:30 a.m.–4:00 p.m.

ADDRESSES: Crystal City Marriott, 1999 Jefferson Davis Hwy., Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Dr. Keith A. Dunn, National Security Study Group, Suite 532, Crystal Mall 3, 1931 Jefferson Davis Highway, Arlington, VA 22202–3805. Telephone 703–602–4175.

Dated: December 27, 1999.

L.M. Bynum,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–34002 Filed 12–30–99; 8:45 am]

BILLING CODE 5000–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board; Notice of Advisory Committee Meetings

SUMMARY: The Defense Science Board Task Force on Air Force Space Launch Facilities will meet in closed session on February 24, 2000, Patrick Air Force Base, Cape Canaveral, FL, and March 24, 2000, at The Aerospace Corporation, Chantilly, VA.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At there meetings the Defense Science Board Task Force on Air Force Space Launch Facilities will assess the anticipated military, civil and commercial space launch requirements and estimate future funding requirements for space launch ranges capable of meeting both national security needs and civil and commercial

needs. The Task Force will discuss interim findings and tentative recommendations resulting from ongoing activities.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Pub. L. 92–463, as amended (5 U.S.C. App. II, (1994)), it has been determined that these Defense Science Board meetings, concern matters listed in 5 U.S.C. 552b(c)(1) (1994), and that accordingly these meetings will be closed to the public.

Dated: December 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–34001 Filed 12–30–99; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Revised Non-Foreign Overseas Per Diem Rates

AGENCY: DoD, Per Diem, Travel and Transportation Allowance Committee.

ACTION: Notice of Revised Non-Foreign Overseas Per Diem Rates.

SUMMARY: The Per Diem, Travel and Transportation Allowance Committee is publishing Civilian Personnel Per Diem Bulletin Number 212. This bulletin lists revisions in the per diem rates prescribed for U.S. Government employees for official travel in Alaska, Hawaii, Puerto Rico, the Northern Mariana Islands and Possessions of the United States. AEA changes announced in Bulletin Number 194 remain in effect. Bulletin Number 212 is being published in the **Federal Register** to assure that travelers are paid per diem at the most current rates.

EFFECTIVE DATE: January 1, 2000.

SUPPLEMENTARY INFORMATION: This document gives notice of revisions in per diem rates prescribed by the Per Diem Travel and Transportation Allowance Committee for non-foreign areas outside the continental United States. It supersedes Civilian Personnel Per Diem Bulletin Number 211. Distribution of Civilian Personnel Per Diem Bulletins by mail was discontinued. Per Diem Bulletins published periodically in the **Federal Register** now constitute the only notification of revisions in per diem rates to agencies and establishments outside the Department of Defense. For more information or questions about per diem rates, please contact your local travel office. The text of the Bulletin follows:

BILLING CODE 5001–10–M

Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal Government civilian employees.

LOCALITY	MAXIMUM LODGING AMOUNT (A)	+	M&IE RATE (B)	=	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
CHANGE IN CIVILIAN BULLETIN 212: EFFECTIVE 1 JANUARY 2000, TAXES ARE NO LONGER INCLUDED IN PRESCRIBED MAXIMUM LODGING AMOUNTS FOR ALL OVERSEAS NON-FOREIGN AREAS. THE APPROPRIATE SECTIONS OF THE JOINT FEDERAL TRAVEL REGULATIONS AND JOINT TRAVEL REGULATIONS ARE BEING REVISED TO REFLECT THIS. AS OF 1 JANUARY 2000 TAXES ON LODGING ARE SEPARATELY REIMBURSIBLE.						
ALASKA						
ANCHORAGE [INCL NAV RES]						
05/01 - 09/15	161		68		229	01/01/2000
09/16 - 04/30	80		60		140	01/01/2000
BARROW	115		73		188	03/01/1999
BETHEL	92		65		157	01/01/2000
CLEAR AB	80		54		134	01/01/2000
COLD BAY	140		73		213	01/01/2000
COLDFOOT	135		71		206	10/01/1999
CORDOVA	85		62		147	03/01/1998
CRAIG						
05/01 - 08/31	95		66		161	10/01/1998
09/01 - 04/30	79		64		143	10/01/1998
DEADHORSE	80		67		147	03/01/1999
DENALI NATIONAL PARK						
06/01 - 08/31	125		56		181	01/01/2000
09/01 - 05/31	90		53		143	01/01/2000
DILLINGHAM	100		58		158	01/01/2000
DUTCH HARBOR-UNALASKA	110		71		181	03/01/1999
EARECKSON AIR STATION	80		54		134	01/01/2000
EIELSON AFB						
05/01 - 09/15	149		62		211	01/01/2000
09/16 - 04/30	75		55		130	01/01/2000
ELMENDORF AFB						
05/01 - 09/15	161		68		229	01/01/2000
09/16 - 04/30	80		60		140	01/01/2000
FAIRBANKS						
05/01 - 09/15	149		62		211	01/01/2000
09/16 - 04/30	75		55		130	01/01/2000
FT. RICHARDSON						
05/01 - 09/15	161		68		229	01/01/2000
09/16 - 04/30	80		60		140	01/01/2000
FT. WAINWRIGHT						
05/01 - 09/15	149		62		211	01/01/2000
09/16 - 04/30	75		55		130	01/01/2000
GLENNALLEN	94		54		148	01/01/2000
HEALY						
06/01 - 08/31	125		56		181	01/01/2000
09/01 - 05/31	90		53		143	01/01/2000
HOMER						
05/15 - 09/15	109		61		170	01/01/2000
09/16 - 05/14	76		58		134	01/01/2000
JUNEAU	95		66		161	01/01/2000
KAKTOVIK	165		75		240	01/01/2000

Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal Government civilian employees.

LOCALITY	MAXIMUM LODGING AMOUNT (A) +	M&IE RATE (B) =	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
KAVIK CAMP	125	69	194	03/01/1999
KENAI-SOLDOTNA				
04/01 - 10/01	104	65	169	01/01/2000
11/01 - 03/31	67	61	128	01/01/2000
KENNICOTT	149	68	217	10/01/1998
KETCHIKAN				
04/01 - 10/15	104	71	175	01/01/2000
10/16 - 03/31	80	69	149	01/01/2000
KING SALMON				
05/01 - 10/01	160	88	248	01/01/2000
10/02 - 04/30	100	82	182	01/01/2000
KLAWOCK				
05/01 - 08/31	95	66	161	10/01/1998
09/01 - 04/30	79	64	143	10/01/1998
KODIAK	90	68	158	01/01/2000
KOTZEBUE				
05/01 - 08/31	137	63	200	01/01/2000
09/01 - 04/30	95	54	149	01/01/2000
KULIS AGS				
05/01 - 09/15	161	68	229	01/01/2000
09/16 - 04/30	80	60	140	01/01/2000
MCCARTHY	149	68	217	10/01/1998
METLAKATLA				
05/30 - 10/01	85	52	137	03/01/1999
10/02 - 05/29	78	51	129	03/01/1999
MURPHY DOME				
05/01 - 09/15	149	62	211	01/01/2000
09/16 - 04/30	75	55	130	01/01/2000
NOME	85	58	143	01/01/2000
NUIQSUT	120	47	167	01/01/2000
PETERSBURG	87	57	144	03/01/1999
POINT HOPE	130	70	200	03/01/1999
POINT LAY	105	67	172	03/01/1999
PRUDHOE BAY	80	67	147	03/01/1999
SEWARD				
05/01 - 09/30	122	65	187	03/01/1999
10/01 - 04/30	86	61	147	03/01/1999
SITKA-MT. EDGECOMBE				
05/16 - 09/15	139	73	212	01/01/2000
09/17 - 05/15	129	72	201	01/01/2000
SKAGWAY				
04/01 - 10/15	104	71	175	01/01/2000
10/16 - 03/31	80	69	149	01/01/2000
SPRUCE CAPE	90	68	158	01/01/2000
TANANA	85	58	143	01/01/2000
UMIAT	107	33	140	03/01/1999
VALDEZ				
05/01 - 10/01	117	68	185	01/01/2000
10/02 - 04/30	99	66	165	01/01/2000
WAINWRIGHT	111	81	192	01/01/2000

Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal Government civilian employees.

LOCALITY	MAXIMUM LODGING AMOUNT (A) +	M&IE RATE (B) =	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
WASILLA	95	60	155	01/01/2000
WRANGELL				
04/01 - 10/15	104	71	175	01/01/2000
10/16 - 03/31	80	69	149	01/01/2000
YAKUTAT	110	68	178	03/01/1999
[OTHER]	80	54	134	01/01/2000
AMERICAN SAMOA				
AMERICAN SAMOA	73	53	126	03/01/1997
GUAM				
GUAM (INCL ALL MIL INSTAL)	135	79	214	01/01/2000
HAWAII				
CAMP H M SMITH	99	61	160	01/01/2000
EASTPAC NAVAL COMP TELE AREA	99	61	160	01/01/2000
FT. DERUSSEY	99	61	160	01/01/2000
FT. SHAFTER	99	61	160	01/01/2000
HICKAM AFB	99	61	160	01/01/2000
HONOLULU (INCL NAV & MC RES CTR)	99	61	160	01/01/2000
ISLE OF HAWAII: HILO	71	50	121	01/01/2000
ISLE OF HAWAII: OTHER	89	50	139	01/01/2000
ISLE OF KAUAI				
05/01 - 11/30	103	58	161	01/01/2000
12/01 - 04/30	131	61	192	01/01/2000
ISLE OF KURE	65	41	106	05/01/1999
ISLE OF MAUI	100	64	164	01/01/2000
ISLE OF OAHU	99	61	160	01/01/2000
KANEOHE BAY MC BASE	99	61	160	01/01/2000
KEKAHA PACIFIC MISSILE RANGE FAC				
05/01 - 11/30	103	58	161	01/01/2000
12/01 - 04/30	131	61	192	01/01/2000
KILAUEA MILITARY CAMP	71	50	121	01/01/2000
LUALUALEI NAVAL MAGAZINE	99	61	160	01/01/2000
NAS BARBERS POINT	99	61	160	01/01/2000
PEARL HARBOR [INCL ALL MILITARY]	99	61	160	01/01/2000
SCHOFIELD BARRACKS	99	61	160	01/01/2000
WHEELER ARMY AIRFIELD	99	61	160	01/01/2000
[OTHER]	72	61	133	01/01/2000
JOHNSTON ATOLL				
JOHNSTON ATOLL	13	9	22	10/01/1998
MIDWAY ISLANDS				
MIDWAY ISLANDS [INCL ALL MILITAR	65	41	106	05/01/1999
NORTHERN MARIANA ISLANDS				
ROTA	88	69	157	01/01/2000
SAIPAN	140	87	227	01/01/2000
[OTHER]	55	62	117	01/01/2000
PUERTO RICO				
BAYAMON				
04/11 - 12/23	155	71	226	01/01/2000
12/24 - 04/10	195	75	270	01/01/2000
CAROLINA				
04/11 - 12/23	155	71	226	01/01/2000

Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal Government civilian employees.

LOCALITY	MAXIMUM LODGING AMOUNT (A) +	M&IE RATE (B) =	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
12/24 - 04/10	195	75	270	01/01/2000
FAJARDO [INCL CEIBA & LUQUILLO]	82	54	136	01/01/2000
FT. BUCHANAN [INCL GSA SVC CTR,				
04/11 - 12/23	155	71	226	01/01/2000
12/24 - 04/10	195	75	270	01/01/2000
HUMACAO	82	54	136	01/01/2000
LUIS MUNOZ MARIN IAP AGS				
04/11 - 12/23	155	71	226	01/01/2000
12/24 - 04/10	195	75	270	01/01/2000
MAYAGUEZ	85	59	144	01/01/2000
PONCE	96	69	165	01/01/2000
ROOSEVELT RDS & NAV STA	82	54	136	01/01/2000
SABANA SECA [INCL ALL MILITARY]				
04/11 - 12/23	155	71	226	01/01/2000
12/24 - 04/10	195	75	270	01/01/2000
SAN JUAN & NAV RES STA				
04/11 - 12/23	155	71	226	01/01/2000
12/24 - 04/10	195	75	270	01/01/2000
[OTHER]	62	57	119	01/01/2000
VIRGIN ISLANDS (U.S.)				
ST. CROIX				
04/15 - 12/14	93	72	165	01/01/2000
12/15 - 04/14	129	76	205	01/01/2000
ST. JOHN				
04/15 - 12/14	219	84	303	01/01/2000
12/15 - 04/14	382	100	482	01/01/2000
ST. THOMAS				
04/15 - 12/14	163	73	236	01/01/2000
12/15 - 04/14	288	86	374	01/01/2000
WAKE ISLAND				
WAKE ISLAND	60	32	92	09/01/1998

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Dated: December 23, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–34003 Filed 12–30–99; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before March 3, 2000.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: December 27, 1999.

William Burrow,

Leader, Information Management Group, Office of the Chief Information Officer.

Office of Educational Research and Improvement

Type of Review: New.
Title: Star Schools Program Online Annual Performance Reporting System.
Frequency: Annually.
Affected Public: Not-for-profit institutions; State, Local, or Tribal Government, SEAs or LEAs.
Reporting and Recordkeeping Hour Burden:
Responses: 18.
Burden Hours: 2,700.
Abstract: The proposed interactive, on-line database provides the U.S. Department of Education and funded Star School Program projects with up-to-date information on a number of key issues that include: basic characteristics of the project and key contact information; project partners; project participants; the project focus; project goals and activities; professional development activities; impact on students; dissemination of project products; lessons learned from the project; and the project's budget.

Requests for copies of the proposed information collection request should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651, or should be electronically mailed to the Internet address OCIO__IMG__Issues@ed.gov or should be faxed to 202–708–9346.

Written comments or questions regarding burden and/or the collection activity requirements should be directed to Kathy Axt at (703) 426–9692 or via her internet address at Kathy__Axt@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 99–34022 Filed 12–30–99; 8:45 am]
BILLING CODE 4000–01–U

DEPARTMENT OF EDUCATION

President's Board of Advisors on Historically Black Colleges and Universities Meeting

AGENCY: President's Board of Advisors on Historically Black Colleges and Universities, Department of Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and agenda of the meeting of the President's Board of Advisors on Historically Black Colleges and Universities. 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.

DATES AND TIMES: Friday, January 21, 2000 from 9:00 a.m. to 5:00 p.m.

ADDRESSES: The meeting will be held at the U.S. Department of Education, located at 1990 K Street, NW, 8th Floor Conference Center, Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Ms. Treopia Washington, White House Initiative on Historically Black Colleges and Universities, U.S. Department of Education, 1900 K Street, NW, Suite 8108, Washington, DC 20006–5120. Telephone: (202) 502–7887.

SUPPLEMENTARY INFORMATION: The President's Board of Advisors on Historically Black Colleges and Universities was established under Executive Order 12876 of November 1, 1993. The Board was established to advise on federal policies that impact upon Historically Black Colleges and Universities, to advise on strategies to increase participation of Historically Black Colleges and Universities in federally sponsored programs and funding opportunities, and to advise on strategies to increase private sector support for these colleges.

The meeting of the Board is open to the public. The meeting will focus on efforts to expand federal and private sector support for Historically Black Colleges and Universities.

Records are kept of all Board procedures and are available for public inspection at the White House Initiative on Historically Black Colleges and Universities located at 1990 K Street, NW, Suite 8099, Washington, DC 20006, from the hours of 8:30 a.m. to 5:00 p.m.

Claudio R. Prieto,

Acting Assistant Secretary for Postsecondary Education.

[FR Doc. 99–34024 Filed 12–30–99 8:45 am]
BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2389–000]

State of Maine; Notice of Intent Not To Issue Annual License

December 28, 1999.

Take notice that on September 16, 1998, the Commission approved the Lower Kennebec River Comprehensive Settlement Accord. The settlement provided for the transfer of the license to the State of Maine, which would then remove the dam and conduct site restoration. The settlement was implemented under annual licenses. By letter dated December 23, 1999, staff concluded the State of Maine fulfilled its obligations to the Commission under the settlement agreement. Accordingly, upon expiration of the annual license on December 31, 1999, a new annual license is not required and will not be issued for the Edwards Project.

David P. Boergers,

Secretary.

[FR Doc. 99–34034 Filed 12–30–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–809–000]

Southern Indiana Gas and Electric Company; Notice of Filing

December 22, 1999.

Take notice that on December 16, 1999, Southern Indiana Gas and Electric Company (SIGECO), tendered for filing the following agreement concerning the provision of electric service to TXU Energy Trading Company, as a umbrella service agreement under its market-based Wholesale Power Sales Tariff:

1. Wholesale Energy Service Agreement dated November 19, 1999, by and between Southern Indiana Gas and Electric Company and TXU Energy Trading Company.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before January 6, 2000. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–34013 Filed 12–30–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG00–52–000, et al.]

Frontera Generation Limited Partnership, et al.; Electric Rate and Corporate Regulation Filings

December 23, 1999.

Take notice that the following filings have been made with the Commission:

1. Frontera Generation Limited Partnership

[Docket No. EG00–52–000]

Take notice that on December 16, 1999, Frontera Generation Limited Partnership, 1616 Woodall Rodgers Freeway, Dallas, Texas 75202, filed with the Federal Energy Regulatory Commission an application for a new determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

Comment date: January 23, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. AmerGen Energy Company, L.L.C.

[Docket No. EG00–53–000]

Take notice that on December 16, 1999, AmerGen Energy Company, L.L.C., submitted an application for Exempt Wholesale Generator status pursuant to Section 32 of the Public Utility Holding Company Act of 1935.

Comment date: January 13, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

3. San Joaquin CoGen Limited

[Docket Nos. EL00–29–000 and QF86–971–004]

Take notice that on December 16, 1999, San Joaquin CoGen Limited (San Joaquin) filed an Application for Acceptance of Settlement and Request for Regulatory Exemptions. San Joaquin requests Commission approval of a settlement agreement between San Joaquin CoGen Limited (and related parties) and seeks certain regulatory approvals.

Comment date: January 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

4. GDK Corp; Power Access Management

[Docket Nos. ER96–1735–013 and ER97–1084–008]

Take notice that on December 6, 1999, the above-mentioned power marketers filed quarterly reports with the Commission in the above-mentioned proceedings for information only.

5. Revelation Energy Resources Corporation

[Docket Nos. ER97–765–004 and ER97–765–005]

Take notice that on December 7, 1999, the above-mentioned power marketer filed quarterly reports with the Commission in the above-mentioned proceedings for information only.

6. Brownsville Power I, L.L.C.

[Docket No. ER00–826–000]

Take notice that on December 17, 1999, Brownsville Power I, L.L.C. (Brownsville Power), tendered for filing Notice of Succession with the Federal Energy Regulatory Commission indicating that the name of SCC–L1, L.L.C. has been changed to Brownsville Power effective December 8, 1999. In accordance with Sections 35.16 and 131.51 of the Commission's regulations, 18 CFR 35.16, 131.51, Brownsville Power adopted and ratified all applicable rate schedules filed with the FERC by SCC–L1, L.L.C.

Comment date: January 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

7. New Albany Power I, L.L.C.

[Docket No. ER00–827–000]

Take notice that on December 17, 1999, New Albany Power I, L.L.C. (New Albany Power), tendered for filing Notice of Succession with the Federal Energy Regulatory Commission indicating that the name of SCC–L3, L.L.C. has been changed to New Albany Power effective December 8, 1999. In accordance with Sections 35.16 and 131.51 of the Commission's regulations, 18 CFR 35.16, 131.51, New Albany Power adopted and ratified all applicable rate schedules filed with the FERC by SCC–L3, L.L.C.

Comment date: January 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

8. Caledonia Power I, L.L.C.

[Docket No. ER00–828–000]

Take notice that on December 17, 1999, Caledonia Power I, L.L.C. (Caledonia Power), tendered for filing Notice of Succession with the Federal Energy Regulatory Commission indicating that the name of SCC–L2, L.L.C. has been changed to Caledonia Power effective December 8, 1999. In accordance with Sections 35.16 and 131.51 of the Commission's regulations, 18 CFR 35.16, 131.51, Caledonia Power adopted and ratified all applicable rate schedules filed with the FERC by SCC–L2, L.L.C.

Comment date: January 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

9. Reliant Energy Services, Inc.

[Docket No. ER00–829–000]

Take notice that on December 17, 1999, Reliant Energy Services, Inc. (RES), tendered for filing in compliance with the Commission's Order issued November 10, 1999 in California Indep. Sys. Operator Corp., 89 FERC ¶ 61,153 (1999), and pursuant to Section 205 of the Federal Power Act, 16 U.S.C. § 824d (1994), and Part 35 of the Commission's Regulations, 18 CFR part 35, a revised FERC Electric Rate Schedule No. 1 providing for the resale of firm transmission rights issued by the California Independent System Operator Corporation.

RES, an indirect, wholly-owned subsidiary of Reliant Energy, Incorporated, is a power marketer authorized to sell electric energy and capacity at wholesale at market-based rates.

RES requests waiver of the prior notice requirements of Section 35.3 of the Commission's regulations, 18 CFR 35.3, to permit its revised FERC Electric Rate Schedule No. 1 to become effective as of February 1, 2000.

Comment date: January 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

10. San Diego Gas & Electric Company

[Docket No. ER00–830–000]

Take notice that on December 17, 1999, San Diego Gas & Electric (SDG&E), tendered for filing a change in rate for the Transmission Revenue Balancing Account Adjustment set forth in its Transmission Owner Tariff (TO Tariff). The effect of this rate change is to reduce rates for jurisdictional transmission service utilizing that portion of the California Independent System Operator-Controlled Grid owned by SDG&E.

SDG&E requests that this rate change be made effective January 1, 2000.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: January 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

11. Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, L.L.C.

[Docket No. ER00–831–000]

Take notice that on December 17, 1999, Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC (Allegheny Energy Supply), tendered for filing Supplement No. 3 to add one (1) new Customer to the Market Rate Tariff under which Allegheny Energy Supply offers generation services.

Allegheny Energy Supply requests a waiver of notice requirements to make service available as of December 16, 1999 to Baltimore Gas and Electric Company.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: January 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

12. Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company L.L.C.

[Docket No. ER00–832–000]

Take notice that on December 17, 1999, Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC (Allegheny Energy Supply), tendered for filing Supplement No. 4 to add one (1) new Customer to the Market Rate Tariff under which Allegheny Energy Supply offers generation services.

Allegheny Energy Supply requests a waiver of notice requirements to make service available as of December 16, 1999 to UtiliCorp United, Inc.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: January 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

13. Enron Power Marketing, Inc.

[Docket No. ER00–833–000]

Take notice that on December 17, 1999, Enron Power Marketing, Inc. (EPMI), tendered for filing pursuant to Section 205 of the Federal Power Act, its FERC Electric Rate Schedule No. 3 for the Sale, Assignment or Transfer of Firm Transmission Rights (FTRs) to become effective as of December 1, 1999, EPMI requests a waiver of the 60-day notice requirement. The Rate Schedule authorizes EPMI to sell, assign or transfer FTRs in California. EPMI states that Rate Schedule No. 3 is filed in accordance with the Commission's order in California Independent System Operator Corporation, 89 FERC ¶ 61,153 (1999).

This filing was sent to the California Independent System Operator Corporation.

Comment date: January 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

14. Southwest Power Pool, Inc.

[Docket No. ER00–834–000]

Take notice that on December 17, 1999, Southwest Power Pool, Inc. (SPP), tendered for filing 65 executed service agreements for loss compensation service under the SPP Tariff.

SPP seeks an effective date of January 1, 2000, for each of these agreements.

Comment date: January 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

15. Ameren Services Company

[Docket No. ER00–835–000]

Take notice that on December 17, 1999, Ameren Services Company (AMS), as Agent for Central Illinois Public Service Company (CIPS), tendered for filing Agreement and Third Amendment dated November 1, 1999, to the Power Supply and Transmission Services Agreement, dated January 9, 1992 between Wabash Valley Power Association and Central Illinois Public Service Company. AMS asserts that the purpose of the Amendment is to facilitate assignment of the Agreement to a GENCO and establish new pricing for capacity and energy.

AMS requests that these filings be permitted to become effective November 1, 1999.

Comment date: January 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

16. Ameren Services Company

[Docket No. ER00–836–000]

Take notice that on December 17, 1999, Ameren Services Company (ASC) tendered for filing Service Agreements for Firm Point-to-Point Transmission Services between ASC and Ameren Services Company, Minnesota Power, Inc. and Delmarva Power & Light (the parties). ASC asserts that the purpose of the Agreements is to permit ASC to provide transmission service to the parties pursuant to Ameren's Open Access Transmission Tariff filed in Docket No. ER 96–677–004.

Comment date: January 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

17. Ameren Services Company

[Docket No. ER00–837–000]

Take notice that on December 17, 1999, Ameren Services Company (ASC), tendered for filing Service Agreements for Non-Firm Point-to-Point Transmission Services between ASC and Ameren Services Company, Minnesota Power, Inc. and Delmarva Power & Light (the parties). ASC asserts that the purpose of the Agreements is to permit ASC to provide transmission service to the parties pursuant to Ameren's Open Access Transmission Tariff filed in Docket No. ER96–677–004.

Comment date: January 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

18. PJM Interconnection, L.L.C.

[Docket No. ER00–838–000]

Take notice that on December 17, 1999, PJM Interconnection, L.L.C. (PJM), tendered for filing three executed umbrella service agreements with Commonwealth Energy Corporation d/b/a electricAMERICA™. One agreement is for non-firm point-to-point service. A second is an umbrella service agreement for short-term firm point-to-point service. The third agreement is an umbrella service agreement for network integration transmission service under state required retail access programs.

Copies of this filing were served upon Commonwealth Energy Corporation d/b/a electricAMERICA™.

Comment date: January 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

19. Southwest Power Pool, Inc.

[Docket No. ER00–839–000]

Take notice that on December 17, 1999, Southwest Power Pool, Inc. (SPP), tendered for filing executed service agreements for firm point-to-point and non-firm point-to-point transmission service under the SPP Tariff with the City of Independence, Missouri (City), Coral Power, L.L.C. (Coral), and with Southwestern Public Service Company (SPS).

Copies of this filing were served upon the City, Coral and SPS.

Comment date: January 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

20. Tenaska Alabama Partners, L.P.

[Docket No. ER00–840–000]

Take notice that on December 17, 1999, Tenaska Alabama Partners, L.P., 1044 North 115th Street, Suite 400, Omaha, Nebraska 68154 (Tenaska Alabama), which will own and operate a natural gas-fired electric generating facility to be constructed in Autauga County, Alabama, submitted for filing with the Federal Energy Regulatory Commission its initial FERC Electric Rate Schedule No. 1 which will enable Tenaska Alabama to engage in the sale of electric energy and capacity at market-based rates.

Comment date: January 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

21. Detroit Edison Company

[Docket No. ER00–841–000]

Take notice that on December 13, 1999, The Detroit Edison Company (Detroit Edison), tendered for filing Service Agreement (the Service Agreement) for Short-Term Firm and Non-Firm Point-to-Point Transmission Service under the Open Access Transmission Tariff of Detroit Edison, FERC Electric Tariff No. 1, between Detroit Edison and Nordic Electric, dated as of (November 30, 1999). The parties have not engaged in any transactions under the Service Agreements prior to thirty days to this filing.

Detroit Edison requests that the Service Agreements be made effective as rate schedules as of December 31, 1999.

Comment date: January 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

22. Virginia Electric and Power Company

[Docket No. ER00–843–000]

Take notice that on December 17, 1999, Virginia Electric and Power Company (Virginia Power), tendered for filing (i) an Agreement for the Purchase of Electricity for Resale from Virginia Electric and Power Company; (ii) a service agreement providing for the Town of Enfield (Enfield) to take Network Integration Transmission Service from Virginia Power under the Company's open access transmission tariff (OATT); and (iii) a network operating agreement between Virginia Power and Enfield also under the OATT.

Virginia Power respectfully requests an effective date of January 1, 2000.

Copies of the filing were served upon Enfield, the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: January 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

23. MidAmerican Energy Company

[Docket No. OA00–2–000]

Take notice that on December 17, 1999, MidAmerican Energy Company (MidAmerican) submitted revised standards of conduct under Order No. 889 *et seq*.[1]

MidAmerican states that it served copies of the filing on representatives of all customers having a service agreement with MidAmerican and to the Iowa Utilities Board, Illinois Commerce Commission and the South Dakota Public Utilities Commission.

Comment date: January 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

24. Southern California Edison Company

[Docket No. ER00–845–000]

Take notice that on December 17, 1999, Southern California Edison Company (SCE), tendered for filing a revision to its Transmission Owner Tariff (TO Tariff). The revised TO Tariff will allow SCE to recover costs billed to it by the California Independent System Operator (ISO) for out-of-market dispatch calls due to locational reliability needs or transmission outages from its TO Tariff customers through the Transmission Revenue Balancing Account Adjustment (TRBAA) mechanism.

SCE proposes that such revision become effective on the date when the ISO Tariff Amendment No. 23, filed in Docket No. ER00–555, is made effective.

Copies of this filing were served upon the Public Utilities Commission of the State of California, the California Independent System Operator (ISO), Pacific Gas and Electric Company, San

[1] Open Access Same-Time Information System (Formerly Real-Time Information network) and Standards of Conduct, 61 FR 21737 (May 10, 1996), FERC Stats. & Regs., Regulations Preambles January 1991–1996 ¶ 31,035 (April 24, 1996), Order No. 889–A, *order on rehearing,* 62 FR 12484 (March 14, 1997), III FERC Stats. & Regs. ¶ 31,049 (March 4, 1997); Order No. 889–B, *rehearing denied,* 62 FR 64715 (December 9, 1997), III FERC Stats. & Regs. ¶ 31,253 (November 25, 1997).

Diego Gas & Electric Company, and the California ISO-registered Scheduling Coordinators.

Comment date: January 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

25. Cinergy Services, Inc.

[Docket No. ER00–846–000]

Take notice that on December 17, 1999, Cinergy Services, Inc., on behalf of PSI Energy, Inc. (PSI Energy), tendered for filing for approval a Facilities Agreement dated as of December 1, 1999 and entered into by and between Indianapolis Power & Light Company (IPL) and PSI Energy.

The Facilities Agreement will allow PSI Energy to loop IPL's 345 kV transmission line into PSI Energy's proposed 150 MVA 345/69 kV Hortonville Tap Substation.

Cinergy states that it has served a copy of its filing upon the Indiana Utility Regulatory Commission.

Comment date: January 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

26. The Detroit Edison Company

[Docket No. ER00–847–000]

Take notice that on December 17, 1999, The Detroit Edison Company (Detroit Edison), tendered for filing an updated market power analysis.

Comment date: January 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

27. Duke Energy Corporation

[Docket No. ER99–2285–003

Take notice that on December 17, 1999, Duke Energy Corporation submitted a compliance filing in the above-referenced docket.

Comment date: January 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

28. Allegheny Energy Service Corporation, on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power)

[Docket No. ER00–842–000]

Take notice that on December 17, 1999, Allegheny Energy Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power), tendered for filing a second amended, fully executed Network Integration Transmission Service Agreement with the Town of Front Royal, Virginia. Allegheny Power states that this executed agreement replaces the previously filed agreement approved by the Commission on January 12, 1999 in Docket Nos. ER98–3926–000, ER98–4357–000 and ER99–895–000. The second amended agreement adds a delivery point for the Town of Front Royal and makes editorial and conforming changes to the agreement.

The proposed effective date under this amended service agreement is April 1, 2000, or such other date as it is permitted to become effective by the Commission.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: January 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

29. PJM Interconnection, L.L.C.

[Docket No. ER00–870–000]

Take notice that on December 17, 1999, PJM Interconnection, L.L.C. (PJM) on behalf of a majority of the Reliability Committee, filed a Petition of PJM Interconnection, L.L.C. To Amend the Reliability Assurance Agreement Among Load Serving Entities in the PJM Control Area.

Comment date: January 7, 2000, in accordance with Standard Paragraph E at the end of this notice.

30. Mid-Continent Area Power Pool

[Docket Nos. OA97–163–008, ER97–1162–007 and OA97–658–008]

Take notice that on December 16, 1999, the Mid-Continent Area Power Pool (MAPP) tendered for filing its refund report pursuant to the Commission's order in *Mid-Continent Area Power Pool,* 88 FERC ¶ 61,157 (1999), regarding refunds required under MAPP's Schedule F.

Comment date: January 7, 2000, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/ online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–34012 Filed 12–30–99; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Transfer of Licenses, Substitution of Relicense Applicant, and Soliciting Comments, Motions To Intervene, and Protests

December 28, 1999.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Types:* (1) Transfer of Licenses and (2) Request for Substitution of Application for New License (in Project No. 2634–007).

b. *Project Nos.:* 2458–079, 2520–044, 2572–049, P–2634–012, and 2634–007.

c. *Date Filed:* December 6, 1999.

d. *Applicants:* Great Northern Paper, Inc. and GNE, LLC.

e. *Name and Location of Project:* The Penobscot Mills, Mattaceunk, and Ripogenous Hydroelectric Projects and the Great Northern Storage Project are on the West Branch and mainstem of the Penobscot River in Penobscot, Piscataquis, Aroostook, and Somerset Counties, Maine. The projects do not occupy federal or tribal lands.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

g. *Applicant Contacts:* Mr. Brian R. Stetson, Great Northern Paper, Inc./ GNE, LLC., One Katahdin Avenue, Millinocket, Maine 04462–1398, (207) 723–5131 and Mr. Donald H. Clarke, Wilkinson Barker Knauer, LLP, 2300 N Street NW, Suite 700, Washington, DC 20037, (202) 783–4141.

h. *FERC Contact:* Any questions on this notice should be addressed to James Hunter at (202) 219–2839, or e-mail address: james.hunter@ferc.fed.us.

i. *Deadline for filing comments and/ or motions:* February 28, 2000.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

Please include the noted project numbers on any comments or motions filed.

j. *Description of Proposal:* The applicants state that Great Northern Paper, Inc. and Duke Energy Corporation are forming GNE, LLC, which will have access to the resources of both corporations for the continued operation and management of these four projects.

The transfer application was filed within five years of the expiration of the license for Project No. 2634, which is the subject of a pending relicense application. In Hydroelectric Relicensing Regulations Under the Federal Power Act (54 FR 23,756; FERC Stats. and Regs., Regs. Preambles 1986–1990 30,854 at p. 31,437), the Commission declined to forbid all license transfers during the last five years of an existing license, and instead indicated that it would scrutinize all such transfer requests to determine if the transfer's primary purpose was to give the transferee an advantage in relicensing (id. at p. 31,438 n. 318).

The transfer application also contains a separate request for approval of the substitution of the transferee for the transferor as the applicant in the pending relicensing application, filed by the transferor on April 28, 1998, in Project No. 2634–007.

k. *Locations of the application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on the web at www.ferc.fed.us/online/rims.htm (Call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the addresses in item g above.

l. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—Anyone may submit comments a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filing must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 99–34035 Filed 12–30–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Applications Tendered for Filing With the Commission and Soliciting Additional Study Requests

December 28, 1999.

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection.

a. *Type of Applications:* New Major License.

b. *Project No.:* 2030–031 and 11832–000.[1]

c. *Date filed:* December 16, 1999, and December 17, 1999, respectively.

[1] PGE and the Tribes are co-licensees for this project, to the extent of their interests. PGE is licensee for the Pelton Development, the Round Butte Development and the Reregulating Dam. The Tribes are licensee for the powerhouse, transmission line and appurtenances at the Reregulating Dam. PGE is applying for a new license for those portions of the project for which it is the licensee. The Tribes are applying for a new license for the entire project. PGE's new license application filed on December 16, 1999, will keep Project Number 2030 and the Tribes' new license application filed on December 17, 1999 has been assigned Project Number 11832.

d. *Applicants:* Portland General Electric Company and the Confederated Tribes of the Warm Springs Reservation of Oregon.

e. *Name of Project:* Pelton Round Butte Project.

f. *Location:* On the Deschutes River in Jefferson, Marion, and Wasco Counties, Oregon. The project is partially in Deschutes National Forest and the Crooked River National Grassland.

g. *Filed Pursuant to:* Federal Power Act, 16 USC 791(a)–825(r).

h. *Contact for PGE:* Julie Keil, Director of Hydro Licensing and Water Rights, Portland General Electric Company, 121 SW Salmon Street, 3WTC–BRHL, Portland, OR 97204, (503) 464–8864.

i. *Contact for the Tribes:* James Manion, General Manager, Warm Springs Power Enterprises, P.O. Box 960, Warm Springs, OR 97761, (541) 553–1046.

j. *FERC Contact:* Hector Perez, hector.perez@ferc.fed.us, 202–219–2843.

k. *Deadline for filing additional study requests:* February 15, 2000.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervener filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

1. This application is not ready for environmental analysis at this time.

m. The Round Butte Development consists of: (1) the 440-foot-high, 1,382-foot-long compacted rock-filled Round Butte Dam with a crest elevation of 1,955 feet above mean sea level (msl) with a spillway intake structure, a spillway tunnel and a modified flip bucket discharge; (2) Lake Billy Chinook with a gross storage capacity of 535,000 acre-feet and a normal maximum water surface area of 4,000 acres at normal maximum water elevation of 1,945 feet msl; (3) a powerhouse intake structure, with trashracks, on the left abutment about, 700 feet upstream from the dam; (4) a 23-foot-diameter, 1,425-foot-long steel-lined power tunnel; (5) a reinforced concrete-encased steel bifurcation consisting of three 14-foot-diameter penstocks; (6) the Round Butte Powerhouse containing three turbine generator units with a total installed

capacity of 300 megawatts (MW); (7) a tailrace channel; (8) a 100-mile-long, 230-kV transmission line from the switchyard to PGE's Bethel Substation; (9) a 10.5-mile-long, 12.5-kV transmission line from the switchyard to the Reregulating Dam; and (10) other appurtenances.

The Pelton Development consists of: (1) the 204-foot-high, 636-foot-long thin-arch variable-radius reinforced concrete Pelton Dam with a crest elevation 1,585 feet msl; (2) a reinforced concrete spillway on the left bank with a crest elevation of 1,558 feet msl; (3) Lake Simtustus with a gross storage capacity of 31,000 acre-feet and a normal maximum surface area of 540 acres at normal maximum water surface elevation of 1,580 feet msl; (4) an intake structure at the dam; (5) three 16-foot-diameter penstocks, 107 feet long, 116 feet long, and 108 feet long, respectively; (6) a powerhouse with three turbine generator units with a total installed capacity of 108 MW; (7) a tailrace channel; (8) a 7.9-mile-long, 230-kV transmission line from the powerhouse to the Round Butte switchyard; and (9) other appurtenances.

The Reregulating Development consists of: (1) the 88-foot-high, 1,067-foot-long concrete gravity and impervious core rockfilled Reregulating Dam with a spillway crest elevation of 1,402 feet msl; (2) a reservoir with a gross storage capacity of 3,500 acre feet and a normal maximum water surface area of 190 acres at normal maximum water surface elevation of 1,435 feet msl; (3) a powerhouse at the dam containing a 18.9-MW turbine generator unit; (4) a tailrace channel; (5) a 3.2-mile-long, 69-kV transmission line from the development to the Warm Springs Substation; and (6) other appurtenances.

n. Copies of the applications are available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, D.C. 20426, or by calling (202) 208–1371. The applications may be viewed on http://www.ferc.fed.us/rims.htm (call (202) 208–2222 for assistance). Copies are also available for inspection and reproduction at the addresses in items h and i above.

o. With this notice, we are initiating consultation with the State Historic Preservation Officer as required by § 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR at § 800.4.

David P. Boergers,

Secretary.

[FR Doc. 99–34036 Filed 12–30–99; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6518–6]

Microbial and Disinfectants/ Disinfection Byproducts Advisory Committee; Notice of Meetings

AGENCY: Environmental Protection Agency.

ACTION: Notice of meetings.

SUMMARY: Under section 10(a)(2) of Public Law 920423, ''The Federal Advisory Committee Act,'' notice is hereby given of a series of meetings of the Microbial and Disinfectants/ Disinfection Byproducts Advisory Committee established under the Safe Drinking Water Act, as amended (42 U.S.C. S300f *et seq.*). All meetings are scheduled from 9:00 a.m. to 5:00 p.m. eastern time, and will be held at RESOLVE, Inc., 1255 23rd Street, NW, Suite 275 Washington DC 20037. The meetings are open to the public, but due to past experience, seating will be limited.

The meetings are scheduled for: February 16–17, to discuss Rule options; microbial/DBP health risks, technologies and costs; March 29–30, to discuss Rule options; microbial/DBP health risks, technologies and costs; and April 18–19, to discuss draft Agreement in Principle.

Statements from the public will be taken if time permits.

For more information, please contact Martha M. Kucera, Designated Federal Officer, Microbial Disinfectants/Disinfection Byproducts Advisory Committee, U.S. EPA, Office of Ground Water and Drinking Water, Mailcode 4607, 401 M Street, SW, Washington, D.C. 20460. The telephone number is 202–260–7773 or E-mail kucera.martha@epamail.epa.gov.

Dated: December 16, 1999.

Cynthia C. Dougherty,

Director, Office of Ground Water and Drinking Water.

[FR Doc. 99–34055 Filed 12–30–99; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 10:00 a.m., Wednesday, January 5, 2000.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any matters carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: December 29, 1999.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 99–34067 Filed 12–29–99; 12 pm]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

General and Plastic Surgery Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

Name of Committee: General and Plastic Surgery Devices Panel of the Medical Devices Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on January 12, 2000, 10 a.m. to 5 p.m.

Location: Corporate Bldg., conference room 020B, 9200 Corporate Blvd., Rockville, MD.

Contact Person: David Krause, Center for Devices and Radiological Health (HFZ–410), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–3090, ext. 141, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12519. Please call the Information Line or access the Internet address of http://www.fda.gov/cdrh/panelmtg.html for up-to-date information on this meeting.

Agenda: The committee will discuss, make recommendations, and vote on a premarket approval application for an Absorbable Adhesion Barrier Device.

Procedure: On January 12, 2000, from 10:30 a.m. to 5 p.m. the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by December 29, 1999. Oral presentations from the public will be scheduled between approximately 11 a.m. and 11:30 a.m., and between approximately 3 p.m. and 3:30 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before January 5, 1999, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Closed Committee Deliberations: On January 12, 2000, from 10 a.m. to 10:30 a.m., the meeting will be closed to permit FDA to present to the committee trade secret and/or confidential commercial information (5 U.S.C. 552b(c)(4)) relating to pending issues and applications.

FDA regrets that it was unable to publish this notice 15 days prior to the January 12, 2000, General and Plastic Surgery Devices Panel of the Medical Devices Advisory Committee meeting. Because the agency believes there is some urgency to bring these issues to public discussion and qualified members of the General and Plastic Surgery Devices Panel of the Medical Devices Advisory Committee meeting were available at this time, the Commissioner of Food and Drugs concluded that it was in the public interest to hold this meeting even if there was not sufficient time for the customary 15-day public notice.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C., app. 2).

Dated: December 21, 1999.

Linda A. Suydam,

Senior Associate Commissioner.

[FR Doc. 99–34068 Filed 12–29–99; 2:12 pm]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99D–5046]

Draft ''Guidance for Industry: Changes to an Approved Application: Biological Products: Human Blood and Blood Components Intended for Transfusion or for Further Manufacture;'' Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance document entitled ''Guidance for Industry: Changes to an Approved Application: Biological Products: Human Blood and Blood Components Intended for Transfusion or for Further Manufacture.'' The draft guidance document applies to the manufacture of all licensed Whole Blood, blood components, Source Plasma, and Source Leukocytes. The draft guidance document, when finalized, is intended to assist manufacturers in determining which reporting mechanism is appropriate for a change to an approved license application for Whole Blood, blood components, Source Plasma, and Source Leukocytes.

DATES: Submit written comments at any time, however, comments should be submitted by April 3, 2000, to ensure their adequate consideration in preparation of the final document.

ADDRESSES: Submit written requests for single copies of ''Guidance for Industry: Changes to an Approved Application: Biological Products: Human Blood and Blood Components Intended for Transfusion or for Further Manufacture'' to the Office of Communication, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist the office in processing your requests. The document may also be obtained by mail by calling the CBER Voice Information System at 1–800–835–4709 or 301–827–1800, or by fax by calling the FAX Information System at 1–888–CBER–FAX or 301–827–3844. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

Submit written comments on the document to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Valerie A. Butler, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance document entitled ''Guidance for Industry: Changes to an Approved Application: Biological Products: Human Blood and Blood Components Intended for Transfusion or for Further Manufacture.'' The draft guidance document is intended to assist licensed manufacturers in determining which reporting mechanism is appropriate for a change to an approved license application for Whole Blood, blood components, Source Plasma, and Source Leukocytes. Recommendations are provided for postapproval changes in product, labeling, production process, quality controls, equipment, and facilities.

In the **Federal Register** of July 24, 1997 (62 FR 39890), FDA published the final rule entitled ''Changes to an Approved Application.'' The final rule amended the biologics regulations in § 601.12 (21 CFR 601.12) to reduce unnecessary reporting burdens on applicants licensed to manufacture biological products under the Public Health Service Act. Under § 601.12, a change to an approved product, labeling, production process, quality controls, equipment, or facilities is required to be reported to FDA in the following manner: (1) A supplement requiring approval prior to distribution; (2) a supplement submitted at least 30 days prior to distribution of the product made using the change; or (3) an annual report, depending on its potential to have an adverse effect on the identity, strength, quality, purity, or potency of the biological product as they may relate to the safety or effectiveness of the product. In addition, FDA made available a guidance document entitled ''Guidance for Industry: Changes to an Approved Application: Biological

Products'' published in the **Federal Register** of July 24, 1997 (62 FR 39904).

On December 2, 1997 (62 FR 56193, October 29, 1997), CBER held a public workshop entitled ''Workshop on the Biologics License Application (BLA) for Blood Products, and Reporting Changes to an Approved Application.'' The workshop was intended for firms that manufacture licensed human blood products, including products for transfusion and source materials for further manufacture. The workshop discussion focused on the application procedures, forms, and documentation needed for the BLA and how changes to an approved application are to be reported to FDA.

In response to comments received from industry requesting guidance specifically for blood and blood components, CBER has developed the draft guidance document for the manufacturers of licensed Whole blood and blood components intended for transfusion and for further manufacture into both injectable and noninjectable products. The draft guidance document, when finalized, will replace the recommendations in the ''Guidance for Industry: Changes to an Approved Application: Biological Products'' for Whole Blood, blood components, Source Plasma, and Source Leukocytes. The ''Guidance for Industry: Changes to an Approved Application: Biological Products'' remains applicable for all other biological products.

This draft guidance document represents the agency's current thinking on changes to an approved application for all licensed human blood and blood components intended for transfusion or for further manufacture. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirement of the applicable statute, regulations, or both. As with other guidance documents, FDA does not intend this document to be all-inclusive and cautions that not all information may be applicable to all situations. The document is intended to provide information and does not set forth requirements.

II. Comments

This draft guidance document is being distributed for comment purposes only, and is not intended for implementation at this time. Interested persons may submit to the Dockets Management Branch (address above) written comments regarding this draft guidance document. Submit written comments at any time, however, comments should be submitted by April 3, 2000, to ensure adequate consideration in preparation of the final document. Two copies of any comments are to be submitted, except individuals may submit one copy. Comments should be identified with the docket number found in the brackets in the heading of this document. A copy of the document and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the document at http://www.fda.gov/cber/guidelines.htm.

Dated: December 22, 1999.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 99–34039 Filed 12–30–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–R–0296]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration; HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. The proposed collections consist of uniform mandatory notices to be given to Medicare home health beneficiaries by home health agencies (HHAs) when the HHA believes that services may not or may no longer be covered. Interested persons are invited to send comments regarding burden or any other aspect of these collections of information requirements. All comments will be considered together, including those comments submitted with respect to the Emergency **Federal Register** notice published on September 22, 1999, with regard to balancing the burden on providers with the provision of sufficient information to beneficiaries. We are particularly interested in receiving input regarding the form of the notices and the order in which the information is presented. We also invite comments on how best to fully inform beneficiaries with regard to services not covered by Medicare. Comments may also be sent regarding the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Additionally, we acknowledge that comments regarding these notices were made by beneficiary advocates in the context of the ongoing litigation in *Healey* v. *Shalala,* Civil Action No.3:98CV00418 (DJS) (D.Conn.). These comments related to: (1) the extent and type of notice that is required in cases in which the physician concurs in the reduction, termination, or denial of services; (2) the incorporation of a statement regarding a requirement that a beneficiary agree to share her medical records with the RHHI in the event that she requests the submission of a demand bill; and (3) general concerns about design and readability. The comments will be considered along with all other comments received in response to this request. However, we consider it most efficient and effective to publish these notices for comment in their present form and to consider all comments in a single comprehensive proceeding.

We also received comments from the National Association of Home Care (''NAHC'') , representing members of the provider community, regarding these notices. These comments related to the time required for implementation and general readability concerns. Among other things, NAHC also stated its belief that the notices misstate, in the boxes regarding the beneficiaries' choices, the standard under which coverage is determined. Similarly, these concerns will be considered with all other comments received in response to this request.

Type of Information Collection Request: Extension of a currently approved collection;

Title of Information Collection: Home Health Advance Beneficiary Notices (HHABNs) and Supporting Regulations in 42 CFR Section 411.404-.406, 484.10, and 484.12(a);

Form No.: HCFA–R–0296 (OMB# 0938–0781);

Use: Beneficiaries must receive timely, accurate, complete, and useful notices which will enable them to make informed consumer decisions, with a proper understanding of their rights to a Medicare initial determination, their appeal rights in the case of payment

denial, and how these rights are waived if they refuse to allow their medical information to be sent to Medicare. It is essential that such notice be timely, readable and comprehensible, provide clear directions, and provide accurate and complete information about the services affected and the reason that Medicare denial of payment for those services is expected by the HHA. For these reasons, uniform mandatory notices (the HHABNs) with very specific content and graphic design have been prepared (they are attached as Exhibits 1–3 hereto), which are to be used by all HHAs furnishing services to Medicare beneficiaries.

When an HHA expects payment for the home health services to be denied by Medicare, a beneficiary must be advised before home health care is initiated or continued, that in the HHA's opinion, payment probably will be required from him or her personally. The attached HHABNs are designed to ensure that HHAs inform beneficiaries in writing, in a timely fashion, about changes to their home health care, the fact that they may have to pay for care themselves if Medicare does not pay, the process they must follow in order to obtain an initial determination by Medicare and, if payment is denied, to file an appeal, and the fact that they waive those rights if they refuse to allow their medical information to be sent to Medicare. The HHABNs are to be issued by the HHA each time, and as soon as, the HHA makes the assessment that it believes Medicare payment will not be made. The HHABNs are to be provided by HHAs in any case where a reduction or termination of services is to occur, or where services are to be denied before being initiated, except in any case in which a physician concurs in the reduction, termination, or denial of services. Failure to do so would be a violation of the HHA Conditions of Participation in the Medicare Program, which are currently approved PRA requirements approved under OMB number 0938–0365, and may result in the HHA being held liable under the Limitation on Liability (LOL) provision.

Home Health Advance Beneficiary Notices (HHABNs) HHABNs, Exhibits 1–3 serve as notice to the beneficiary that the HHA believes that home health services are not, or will no longer be, covered in different situations. HHABN–T, Termination, is used when all home health services will be terminated. HHABN–I, Initiation, is used when the HHA expects that Medicare will not pay, even before services have been initiated. HHABN–R, Reduction, is used when ongoing home health services will be reduced (e.g., reduced in number, frequency, or for a particular subset of services, or otherwise).

Frequency: On occasion.

Affected Public: Individuals or Households, Business or other for-profit, Not-for-profit institutions.

Number of Respondents: 540,000.

Total Annual Responses: 1,080,000.

Total Annual Hours: 180,000.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www/hcfa/gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: Health Care Financing Administration, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Attention: Dawn Willinghan, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: December 22, 1999.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 99–33945 Filed 12–30–99; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Competitive Comprehensive Grants Preview (1999 FY) Availability

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice; correction.

SUMMARY: In the **Federal Register** issue of Thursday, August 18, 1999, make the following correction:

Correction

In the **Federal Register** issue of Wednesday, August 18, 1999, in FR Doc. 99–21257, on page 45025, the cooperative agreement category in the second column under the heading ''Health Care Information and Information for Families of Children with Special Health Care Needs (CFDA# 93.110S)'' is withdrawn from competition due to Agency delay in implementing the prerequisite pilot phase of the Initiative.

Dated: December 23, 1999.

Claude Earl Fox,

Administrator.

[FR Doc. 99–34041 Filed 12–30–99; 8:45 am]

BILLING CODE 4160–15–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. AA1921–124 and 731–TA–546–547 (Reviews)]

Certain Steel Wire Rope From Japan, Korea, and Mexico

Determinations

On the basis of the record [1] developed in the subject five-year reviews, the United States International Trade Commission determines,[2] pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act), that revocation of the antidumping duty finding and orders on certain steel wire rope from Japan, Korea, and Mexico would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

Background

The Commission instituted these reviews on January 4, 1999 (64 FR 367) and determined on April 8, 1999 that it would conduct full reviews (64 FR 19198, April 19, 1999). Notice of the scheduling of the Commission's reviews and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** on June 30, 1999 (64 FR 35181). The hearing was held in Washington, DC, on October 14, 1999, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on December 20, 1999. The views of the Commission are contained in USITC Publication 3259 (December 1999), entitled Certain

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Chairman Lynn M. Bragg dissenting on Japan, and Commissioner Stephen Koplan dissenting on Japan and Mexico.

Steel Wire Rope from Japan, Korea, and Mexico: Investigations Nos. AA1921–124 and 731–TA–546–547 (Reviews).

Issued: December 27, 1999.
By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–34038 Filed 12–30–99; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Labor Advisory Committee for Trade Negotiations and Trade Policy; Meeting Notice

Pursuant to the provisions of the Federal Advisory Committee Act (Pub.L. 92–463 as amended), notice is hereby given of a meeting of the Steering Subcommittee of the Labor Advisory Committee for Trade Negotiations and Trade Policy.

Date, time and place: January 26, 2000, 10:00 AM; U.S. Department of Labor, Room N–4437 A&B, 200 Constitution Ave., NW, Washington, D.C. 20210.

Purpose: The meeting will include a review and discussion of current issues which influence U.S. trade policy. Potential U.S. negotiating objectives and bargaining positions in current and anticipated trade negotiations will be discussed. Pursuant to 19 U.S.C. 2155(f) it has been determined that the meeting will be concerned with matters the disclosure of which would seriously compromise the Government's negotiating objectives or bargaining positions. Accordingly, the meeting will be closed to the public.

For further information contact: Jorge Perez-Lopez, Director, Office of International Economic Affairs, Phone: (202) 219–7597.

Signed at Washington, D.C. this 27th day of December 1999.

Andrew James Samet,

Deputy Under Secretary International Affairs.

[FR Doc. 99–34047 Filed 12–30–99; 8:45 am]

BILLING CODE 4510–28–M

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon And Related Acts,'' shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW, Room S–3014, Washington, DC 20210.

Modifications to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled ''General Wage Determinations Issued Under the Davis-Bacon and Related Acts'' being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I:

Massachusetts
MA990007 (Mar. 12, 1999)
New York
NY990060 (Mar. 12, 1999)
Rhode Island
RI990001 (Mar. 12, 1999)

Volume II:

Pennsylvania
PA990009 (Mar. 12, 1999)

PA990059 (Mar. 12, 1999)

Volume III:

None

Volume IV:

None

Volume V:

Iowa
IA990001 (Mar. 12, 1999)

IA990003 (Mar. 12, 1999)

Volume VI:

Idaho
ID990001 (Mar. 12, 1999)

ID990003 (Mar. 12, 1999)

ID990014 (Mar. 12, 1999)
Oregon
OR990001 (Mar. 12, 1999)

OR990017 (Mar. 12, 1999)
Washington
WA990007 (Mar. 12, 1999)

WA990009 (Mar. 12, 1999)

Volume VII:

None

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon and Related Acts.'' This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the seven separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, DC this 22nd day of December 1999.

Carl J. Poleskey,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 99–33595 Filed 12–30–99; 8:45 am]

BILLING CODE 4510–27–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–3453]

Moab Mill Reclamation Trust; Notice of Order and an Opportunity for a Hearing

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Order transferring License No. SUA–917 for the Moab, Utah facility and site from Atlas Corporation to the Moab Mill Reclamation Trust; notice of opportunity for a hearing.

SUMMARY: Notice is hereby given that the U.S. Nuclear Regulatory Commission (NRC) has signed an Order (copy attached) dated December 27, 1999, transferring Source Material License SUA–917 for the Moab, Utah, facility and site from Atlas Corporation (Atlas) to the Moab Mill Reclamation Trust (Trust). On September 22, 1998, Atlas filed a petition for relief under Chapter 11 of the U.S. Bankruptcy Code. After filing for relief, Atlas entered into settlement discussions with NRC, the State of Utah, and other parties to the bankruptcy proceeding regarding the reclamation and disposition of the Moab Mill Site. Those discussions resulted in the development of the Moab Uranium Millsite Transfer Agreement (Settlement Agreement) which provides for transfer of the Moab Mill Site and the NRC license to a trust, the trustee of which would carry out remediation of the site pursuant to the terms and conditions of NRC License SUA–917, as amended on June 24, 1999. The terms and conditions of NRC License SUA–917 include the reasonable and prudent alternatives (RPAs) and reasonable and prudent measures (RPMs) in the U.S. Fish and Wildlife Service's final biological opinion (FBO) dated July 29, 1998 (included in the NRC's ''Final Environmental Impact Statement Related to Reclamation of the Uranium Mill Tailings at the Atlas Site, Moab, Utah,'' (FEIS) NUREG–1531, published in March 1999), as well as mitigative measures developed by the NRC staff. The Settlement Agreement was submitted to the United States Bankruptcy Court for the District of Colorado for approval on April 29, 1999. On December 1, 1999, the Court issued an Order confirming the second amended plan of reorganization of the Atlas Corporation, which includes the Settlement Agreement.

FOR FURTHER INFORMATION CONTACT: Myron Fliegel, Office of Nuclear Material Safety and Safeguards, Washington, DC 20555–0001, telephone (301) 415–6629, e-mail mhf1@nrc.gov.

Dated at Rockville, Maryland, this 27th day of December 1999.

For the Nuclear Regulatory Commission.

Michael C. Layton,

Acting Chief, Uranium Recovery and Low-Level Waste Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

Order Transferring License No. SUA–917 for The Moab Mill Site

I.

Atlas Corporation (Atlas) is the holder of License No. SUA–917, which authorized the milling of uranium ore at Atlas' Moab Mill Site located in Moab, Utah. In accordance with Amendment No. 31 of the license, the license will not expire until the NRC terminates it.

II.

Atlas acquired the Moab Mill Site in 1962 from the Uranium Reduction Company (URC) which built milling facilities and began operations at the site in October 1956. The site is located in Grand County, Utah, on the northwest shore of the Colorado River, 5 km (3 miles) from the center of Moab, and can be accessed from U.S. Highway 191 north of Moab. The site encompasses 162 hectares (400 acres) on the outside bend of the Colorado River, at the southern terminus of the Moab Canyon. The site is surrounded on the north and west sides by high sandstone cliffs; to the north and east is Moab Wash; to the east and south is the flood plain of the Colorado River; and, across the river, is Moab Marsh. The site generally slopes toward the Colorado River and Moab Wash. The uranium tailings from the Moab milling operations occupy about 53 hectares (130 acres) of land about 230 m (750 ft) from the Colorado River. Mill operations ceased in 1984. Decommissioning of the mill began in 1988. Construction of an interim cover for placement over the tailing disposal area began in 1989 and was completed in 1995.

III.

On September 22, 1998, Atlas filed a petition for relief under Chapter 11 of the U.S. Bankruptcy Code and since that date has been operating as a Debtor in Possession. After filing for relief, Atlas entered into settlement discussions with the U.S. Nuclear Regulatory Commission (NRC), the State of Utah, and other parties to the bankruptcy proceeding regarding the reclamation and disposition of the Moab Mill Site. Those discussions resulted in the development of the Moab Uranium Millsite Transfer Agreement (Settlement Agreement) which provides for transfer of the Moab Mill Site and the NRC license to a trust, the trustee of which would carry out remediation of the site pursuant to the terms and conditions of NRC License SUA–917, as amended on June 24, 1999. The terms and conditions of NRC License SUA–917 include the reasonable and prudent alternatives (RPAs) and reasonable and prudent measures (RPMs) in the U.S. Fish and Wildlife Service's final biological opinion (FBO) dated July 29, 1998 (included in the NRC's ''Final Environmental Impact Statement Related to Reclamation of the Uranium Mill Tailings at the Atlas Site, Moab,

Utah,'' (FEIS) NUREG–1531, published in March 1999), as well as mitigative measures developed by the NRC staff.

The NRC, which had filed claims in bankruptcy against Atlas totaling about $44 million, entered into the Settlement Agreement described in the preceding paragraph rather than involve the NRC in a protracted legal dispute over the limited funds that would be available for site remediation from the liquidation of the Atlas Corporation. The NRC believes that measures taken pursuant to the Settlement Agreement will permit remediation of the Moab Mill Site to proceed in a more timely manner and will maximize the amount of private funding available for remediation of the Moab Mill Site. The Settlement Agreement was submitted to the United States Bankruptcy Court for the District of Colorado for approval on April 29, 1999. On December 1, 1999, the Court issued an Order confirming the second amended plan of reorganization of the Atlas Corporation, which includes the Settlement Agreement.

Consistent with the terms of the Settlement Agreement, the NRC and the State of Utah undertook to identify a Trustee to administer the Moab Mill Reclamation Trust (Trust). PricewaterhouseCoopers LLP (Trustee) has agreed to undertake remediation of the Moab Mill Site, pursuant to 10 CFR Part 40 under License SUA–917 and in accordance with the Trust established for such purposes. The NRC has agreed to accept the Settlement Agreement in satisfaction of Atlas' regulatory responsibilities under 10 CFR Part 40 for remediation of the Moab Mill Site, to transfer License SUA–917 to the Trust, and to limit the Trustee's liability for remediation and maintenance of the site to the amount of funding available to the Trust from Atlas' assets, receivables and future receivables transferred to the Trust under the Settlement Agreement, and any other assets which may become available to the Trust. The NRC is aware that because of the time involved in concluding the bankruptcy proceeding, some dates in the license conditions have already passed while others are imminent and therefore, might be impractical for the Trustee to meet. These dates will be considered in future actions.

Current assets and receivables include the following:

(1) $5.25 million in cash from Atlas/ACSTAR (the entity which holds the reclamation bond issued for the benefit of the NRC to be used for reclamation of the Moab Mill Site.

This entity has agreed to transfer the sum to the Trust in full and complete satisfaction of its obligations under Bond #5652);

(2) The assignment of funds from the Department of Energy pursuant to the Energy Policy Act of 1992 (Pub. L. 102–486, Title X, Section 1001, Oct. 24, 1992, 106 Stat. 2946, codified at 42 U.S.C. 2296(a)), [hereinafter ''Title X funds''] for past claims. This amount is estimated to be approximately $1,082,000;

(3) Fifty (50) percent of any net recovery from collection of the disputed Title X claim for dismantling performed by American Reclamation and Dismantling Inc. (ARD claim);

(4) Any and all of Atlas' rights as a licensee to future Title X funds;

(5) Atlas' water rights located at the Moab Land, listed as 6.3 cubic feet per second (cfs) from the Colorado River, Grand County, Utah, Water Right Number 01–40, Application 30032, Certificate No. 60111;

(6) Atlas' possible Water Rights in the following:

A. Water Right Number 01–1121 for 31 acre-feet, a segregation application from Water Right Number 01–40;

B. Water Right Number 09–199 for 3.33 cfs in the San Juan River;

C. Water Right Number 05–982 for .015 cfs for a well in the Monticello Mining District;

D. Water Right Number 99–32 for .004 cfs from Seep Springs (approximately 4 miles from Fry Canyon);

(7) Atlas' interest in the certain real property owned by Atlas and consisting of approximately 430 acres, located in Grand County, Utah, together with all buildings, structures, improvements, appurtenances, fixtures, and easements; and

(8) Two and a half (2.5) percent of the stock in a reorganized Atlas Corporation which would be issued to the Reclamation Trust.

The land and water rights, herein described, have stand-alone value and may be sold by the Trustee independent of, and prior to or during, any reclamation work being performed at the site by the Trustee. As to items 5, 6, and 7 above, Atlas will transfer all said assets to the Trust by way of quit claim deed or similar document, without representations, warranties, or indemnification rights of any kind.

IV.

Remediation of the Moab Mill Site is to be conducted in accordance with the terms and conditions of License SUA–917. These include the RPAs and RPMs in the U.S. Fish and Wildlife Service's FBO, dated July 29, 1998. The Trustee has agreed to these terms and conditions. The NRC, as the lead Federal Agency regarding the consultation required under Section 7 of the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*), has included these RPAs and RPMs in the NRC's NUREG–1531 published in March 1999.

The Trustee's maintenance of the site and administration of the remediation of the site in accordance with the terms of license SUA–917 and the terms of this Order, will provide adequate protection of the public health and safety and reasonable assurance of compliance with the Commission's regulations.

Pursuant to the terms of the Settlement Agreement described in the preceding sections of this Order, the NRC, with concurrence from the State of Utah, selected PricewaterhouseCoopers LLP as Trustee. PricewaterhouseCoopers LLP is qualified to perform the duties enumerated in this Order.

In view of the foregoing, I have authorized the transfer of License SUA–917 which will be amended to reflect the change in the named licensee. The Trustee accedes to this Order voluntarily, and has agreed to take the necessary steps to undertake remediation of the site to the extent permitted by the funds available to the Trust, according to the requirements in Part V of this Order.

V.

Accordingly, pursuant to Sections 62, 63, 81, 84, 161b, 161i, 161o and 184 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 *et seq.*), and the Commission's regulations in 10 CFR Part 40, *it is hereby ordered* That, effective December 30, 1999, License SUA–917 is transferred to the Trust and the Trustee is authorized to possess byproduct material in the form of uranium waste tailings and other uranium waste generated by Atlas' milling operations at the Moab Mill Site pursuant to the terms and conditions of License SUA–917. *It is further ordered* that:

A. The Trustee shall:

1. Perform remediation of the site pursuant to the terms and conditions of NRC License SUA–917.

2. Notify and request relief from the Chief, Uranium Recovery and Low-Level Waste Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards, NRC, Washington, DC 20555–0001, if the Trustee believes it should be relieved of any requirements in the license because the Trustee believes that these requirements are impracticable given the parameters of the Trust Agreement or that they have either been satisfactorily completed or are unnecessary. The Trustee will continue

to comply with all requirements in this license pending NRC action on the Trustee's request for relief from specified requirements under this subsection.

3. Cooperate with the NRC (or its contractor) in NRC's site inspections.

4. Cooperate with the U.S. Department of Energy (DOE) in matters relating to the transfer of the site to DOE, including preparation by DOE of the site Long-Term Surveillance Plan required by 10 C.F.R. 40.28.

5. Use reasonable efforts to secure all Title X funds from the Department of Energy pursuant to section 1001 of the Energy Policy Act of 1992 (42 U.S.C. 13201 et seq.) to which it is legally entitled, including requests for additional Title X funds from DOE based on remediation work at the site performed by or on behalf of the Trust.

6. Notify the Director, Office of Nuclear Material Safety and Safeguards, NRC, Washington, DC 20555–0001, and the Regional Administrator, NRC Region IV, NRC Region IV, 611 Ryan Plaza Drive, Suite 400, Arlington, TX 76011–8064, by certified registered mail, no later than 180 days prior to the anticipated date, that all contractual and other projected obligations will have reasonably exhausted the Trust Fund.

7. Upon notification required by paragraph 6 of this Part, cease remediation work as set forth in this Order, and commence passive maintenance and monitoring only of the site in order to provide for the protection of the public health and safety using the remaining assets in the Reclamation Trust to fund monitoring and maintenance until further order of the NRC.

B. Upon completion of the NRC inspection to determine that the site has been remediated in conformance with the requirements in 10 C.F.R. Part 40 and the conditions set forth in the license to the extent practicable given the funding available to the Trustee, title to the real property and the remaining byproduct material at the Moab Mill Site will be transferred in accordance with section 83 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations, and this license shall be modified or terminated accordingly.

C. Notwithstanding any of the foregoing requirements, the NRC shall not require the Trustee to perform or pay for any reclamation, remediation, monitoring, or surveillance, the cost of which would exceed the amount of money available to the Trustee from the Trust assets and receivables. The Trustee's responsibilities, liabilities and authority under this license shall terminate upon further order of the NRC.

D. The requirements identified in this Order may only be modified in writing by the Director, Office of Nuclear Material Safety and Safeguards.

VI.

Any person adversely affected by this Order, other than Atlas or the Trustee, may request a hearing within 20 days of its issuance. Any request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555–0001. Copies of any hearing requests also shall be sent to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555–0001; to the Assistant General Counsel for Materials Litigation and Enforcement, at the same address; to the Regional Administrator, NRC Region IV, 611 Ryan Plaza Drive, Suite 400, Arlington, TX 76011–8064 and to the Trustee, PricewaterhouseCoopers LLP, Attention: Mr. Keith E. Eastin, Director, 1201 Louisiana, Suite 2900, Houston, TX 77002–5678. If a hearing is requested, the requester shall set forth with particularity the manner in which his or her interest is adversely affected by this Order and shall address the criteria set forth in 10 C.F.R. 2.1306 and 2.1308.

If a hearing is requested by a person whose interest is adversely affected by this Order, the Commission will consider the hearing request pursuant to 10 C.F.R. Part 2, Subpart M, and will issue an Order designating the time and place of any hearing. If a hearing is held, the procedures of Subpart M will be applied as provided by the Order designating the time and place of the hearing. The issue to be considered at such hearing shall be whether this Order transferring the license should be sustained. Any request for a hearing shall not stay the effectiveness of this Order.

Dated at Rockville, Maryland, this 27th day of December 1999.

For the Nuclear Regulatory Commission.

William F. Kane,

Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 99–34053 Filed 12–30–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Risk-Informed Revisions to Technical Requirements; Workshop and Website

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of public workshop and NRC Part 50 (Option 3) website.

SUMMARY: The Nuclear Regulatory Commission has instructed its staff to explore changes to specific technical requirements of 10 CFR Part 50, to incorporate risk-informed attributes. The staff is studying the ensemble of technical requirements contained in 10 CFR Part 50 (and its associated implementing documents, such as regulatory guides and standard review plan sections) to (1) identify individual or sets of requirements potentially meriting change; (2) prioritize which of these requirements (or sets of requirements) should be changed; and (3) develop the technical bases to an extent that is sufficient to demonstrate the feasibility of changing the requirements. This work will result in recommendations to the Commission on any specific regulatory changes that should be pursued. Public participation in the development of these recommendations will be obtained via workshops and information on a website.

SUPPLEMENTARY INFORMATION: This notice serves as initial notification of a public workshop, and website, to provide for the exchange of information with all stakeholders regarding the staff's efforts to risk-inform the technical requirements of 10 CFR Part 50. The subject of the workshop will be to discuss the preliminary work being performed by the NRC staff on risk-informing the technical requirements of 10 CFR Part 50. The meeting will focus on the overall framework of the risk-informing process, the criteria used to identify and prioritize candidate regulations and design basis accidents (DBAs), the results of the staff's initial efforts in risk-informing the two trial implementation issues (i.e., 10 CFR 50.44 and special treatment rules), a list of some additional candidate requirements and DBAs to be examined, and discussion of preliminary issues associated with the development and implementation of the entire process.

This notice provides only the date, the location and a brief summary of the workshop; the workshop agenda and other details will be provided in a forthcoming notice. The address for the Part 50 (Option 3) website is as follows: http://nrc-part50.sandia.gov.

The Part 50 (Option 3) website can also be accessed from the NRC website (http://www.nrc.gov), by selecting ''Nuclear Reactors,'' and then ''Risk-Informed Part 50 (Option 3).''

Workshop Meeting Information

The staff intends to conduct a workshop to provide for an exchange of information related to the risk-informed revisions to the technical requirements of 10 CFR Part 50. Persons other than NRC staff and NRC contractors interested in making a presentation at the workshop should notify Mary Drouin, Office of Nuclear Regulatory Research, MS: T10–E50, U.S. Nuclear Regulatory Commission, Washington D.C. 20555–0001, (301) 415–6675, email: mxd@nrc.gov.

Date: February 24, 2000 (with possible extension to February 25, 2000).

Agenda: To be provided.

Location: NRC Auditorium, 11545 Rockville Pike, Rockville, Maryland 20852.

Registration: No registration fee for workshop; however, notification of attendance is requested so that adequate space, materials, etc., for the workshop can be arranged. Notification of attendance should be directed to Alan Kuritzky, Office of Nuclear Regulatory Research, MS: T10–E50, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555–0001, (301) 415–6255, email: ask1@nrc.gov.

FOR FURTHER INFORMATION CONTACT: Alan Kuritzky, Office of Nuclear Regulatory Research, MS: T10–E50, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555–0001, (301) 415–6255, email: ask1@nrc.gov.

Dated this 23d day of December 1999.

For the Nuclear Regulatory Commission.

Mark A. Cunningham,

Probabilistic Risk Analysis Branch, Division of Risk Analysis and Applications, Office of Nuclear Regulatory Research.

[FR Doc. 99–34052 Filed 12–30–99; 8:45 am]

BILLING CODE 7590–01–P

POSTAL SERVICE

Quality Control Reviews for Discounted Letters (Presorted/ Automation Rate Mail)

AGENCY: Postal Service.

ACTION: Notice and request for comments.

SUMMARY: The Postal Service is implementing more efficient quality control procedures to check letter mail preparation for rates claimed on postage statements. An automated, in-depth review of selected letter size mailings will be conducted using the Mail Quality Analysis (MQA) program, in addition to verification procedures now in use for all mailings. MQA will use existing automated equipment and reports to compare actual presort to mailer documentation for sampled mail. MQA also will provide feedback on the readability of mailer-applied barcodes. The Postal Service seeks comments on the Mail Quality Analysis (MQA) program.

EFFECTIVE DATE: Phase one of the Mail Quality Analysis Program will begin on January 3, 2000. All written comments must be received on or before February 2, 2000.

ADDRESSES: Written comments should be mailed or delivered to Rates and Classification Service Center, U.S. Postal Service, 5904 Richmond Highway, Suite 500, Alexandria VA 22303–2736.

FOR FURTHER INFORMATION CONTACT: Mark Richards, (703) 329–3684.

SUPPLEMENTARY INFORMATION:

Improperly prepared mail results in additional USPS handling and related costs that eventually are passed on to all customers in the form of rate increases. Since 1982, the Postal Service has applied quality controls in the form of standardized mail acceptance and mail verification procedures to support the goal of keeping postage rates stable. Along with the National Bulk Mail Verification Program (NBMVP) in 1982, the Postal Service has taken many steps to control operating costs, assess postage fairly for each mailer, and charge postage commensurate with the preparation of the mail. Classification reform in 1996 and the last rate case (R97–1) gave rate incentives for properly preparing mail that is compatible with automated processing and presorted to avoid certain processing operations.

As further background, revisions to the National Bulk Mail Verification Program through two Postal Bulletin articles in 1989 reduced the acceptable tolerance level for presort errors from 10 percent to 5 percent before a postage adjustment was calculated. Mailers were later advised in a Postal Bulletin article in 1989 that tolerance levels for errors would be reduced to 2 percent at a future date. Further, in 1996, classification reform formalized the requirement that only mail meeting automation requirements is eligible for automation rates. MQA does not involve a change in the current 5 percent presort error tolerance level.

Today, both mailer production and Postal Service processing are highly automated processes. Large mailings are more easily created and produced with each advance in mail production hardware and software. It has become increasingly important for mailers to introduce quality assurance features into mail production operations in the design and set-up stages. Once production of a mailing begins, problems not identified through internal quality controls may not be easily corrected. Problems discovered by the Postal Service related to presorting and automation specifications generally surface during mail processing, which is often far from the acceptance point for the mailing. It is therefore critical for mailers to use the tools noted below and effective quality assurance procedures to produce mail that follows Domestic Mail Manual requirements for the postage rates claimed.

Using mailer's input, the Postal Service has provided a variety of tools to improve mail quality in the design and set-up stages. Included are a variety of address management programs, Presort Accuracy Validation and Evaluation (PAVE), the Mailpiece Quality Control Program (MQC), the Mail Preparation Total Quality Management Program (MPTQM), various handbooks and brochures, the Domestic Mail Manual, and Customer Support Rulings. Information on many of these tools is available on the Postal Service Internet sites. Postal business centers, business mail entry managers, mailpiece design analysts, and the National Customer Service Center are available to assist customers in design of mail. The net effect of these efforts is the expectation that today's business mailings should be of exceptionally high quality.

Current Postal Service quality controls focus on manual verification of a small number of mail pieces and were designed when mail production and mail processing environments were not highly automated. Under MQA, larger portions of selected mailings will be reviewed as they are run on Postal Service barcode sorters. MQA will use reports already available from this equipment (which has been performing this function with documented accuracy for years) to compare the mailing, or a portion of the mailing, to the postage statement and supporting mailer documentation for that specific mailing. MQA will assist the Postal Service in providing improved diagnostic feedback to mailers on the quality of sampled mail. These procedures will lead to improved mail quality, reduction in costs, and correct payment of postage.

Mail will be isolated at postal facilities and detached mail units. The business mail entry unit, revenue assurance, and mail processing will work together using automated equipment already in place to perform the analysis of MQA samples. Initial runs will focus on large volume

mailings, with subsequent mail selection determined by the results of MQA reports and feedback from mail processing, mail acceptance, and other sources.

MQA will be implemented in two phases. Phase one will implement the MQA program on a national basis in December 1999, collect data, and develop improvements to MQA procedures. During phase one, mailers will receive diagnostic reports only. The reports will allow the mailer to correct quality problems. Phase one will run through June 2, 2000. Phase two will begin on June 3, 2000, and as of this date postage adjustments will be made when presort error rates over 5 percent are found. Even during this phase, a mailer's first MQA report (for mailers who received no report during phase one) will be for diagnostic and notification purposes only, with no postage adjustment cited. Additionally, errors discovered through MQA that amount to less than $50 in additional postage will not be assessed at any point in time. Mailers will have their normal appeal rights regarding postage adjustments. Domestic Mail Manual PO 11.4–11.5. In both phase one and two, MQA will provide feedback on barcode readability. A decision will be made at a later date as to whether postage adjustments eventually will apply.

By necessity, MQA will extract data about a mailing after acceptance of the mail, as it is entered into postal processing. The numerous postage rates and discounts available, automation of mail production, and acceptance and processing procedures, combined with more mail requesting specific in-home delivery dates, mean that reworking mail after initial acceptance has become less viable. Mailers will not have the option of reworking mail to avoid a postage adjustment after June 2, 2000.

Now and in the past, Domestic Mail Manual G020.2 has described how all mailers are required to comply with applicable postal standards. DMM G020.2.2 and each postage statement also show that when proper postage is not claimed on the postage statement, the Postal Service must collect correct postage, at or after the time of acceptance. Mailers with effective quality assurance procedures resulting in accurate representation of their mail on each postage statement will not encounter postage adjustments and therefore will not be affected by MQA.

The Postal Service and mailers have worked together for many years to improve the quality of mail, which ultimately benefits all customers through lower USPS processing costs and more stable postage rates. MQA extends this effort further by incorporating an improved feedback procedure into the process. Mailers have for some time requested regular feedback concerning their mail. MQA will provide this feedback for selected mailings.

MQA procedures will be described in an upcoming issue of Mailers Companion.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 99–34051 Filed 12–30–99; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Privacy Act of 1974, System of Records

AGENCY: Postal Service.

ACTION: Notice of amended system of records.

SUMMARY: The purpose of this document is to publish notice of amendments to Privacy Act system of records USPS 140.020, Postage—Postage Meter Records, renamed by this notice as USPS 140.020, Postage—Postage Evidencing System Records. The change is necessary to broaden the definition to include new postage evidencing technology that allows customers to purchase postage and print evidence of postage directly onto envelopes and labels using their personal computers, printers, and the Internet (PC Postage). In addition, changes in the system description are required to reflect collection of information related to payment of postage through both traditional paper-based licensing, as well as new postage evidencing products that allow customers to apply for licenses online.

DATES: Any interested party may submit written comments on the proposed amendments. This proposal will become effective without further notice on February 2, 2000, unless comments received on or before that date result in a contrary determination.

ADDRESSES: Written comments on this proposal should be mailed or delivered to: Administration and FOIA, United States Postal Service, 475 L'Enfant Plaza, SW, RM 8141, Washington, DC 20260–5202. Copies of all written comments will be available at the above address for public inspection and photocopying between 8 a.m. and 4:45 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Betty Sheriff (202) 268–2608.

SUPPLEMENTARY INFORMATION: Privacy Act system of records USPS 140.020, Postage—Postage Meter Records, renamed by this notice as USPS 140.020, Postage—Postage Evidencing System Records, has traditionally covered information collected from customers who apply for meter licenses and who purchase postage under those meter licenses. The system name and notice is amended to make it clear that the system also covers information collected through implementation of new technology information postage evidencing systems. This new technology has led to postage evidencing systems that generate an Information Based Indicia.

Using products developed by commercial vendors, the Postal Service offers a service that lets customers purchase postage and print evidence of postage directly onto envelopes and labels using their personal computers, printers, and the Internet. Customers must have a Postal Service-issued license before they can purchase and print postage. The license applications are processed through traditional licensing methods with the Postal Service maintaining the kind of information historically covered by system USPS 140.020. The postage is printed on the label or envelope in the form of a special digital imprint called an Information Based Indicia. Postage evidencing systems that produce an Information Based Indicia generate transaction log files for each indicia created by a customer. These transaction log files include data unique to security and revenue protection under the Information Based Indicia Program (IBIP). This notice expands the categories of records in the system to include the new information collected by the postage evidencing systems generating Information Based Indicia and improves the description of the data historically collected.

In addition, because data from the system may be used by the Postal Service to advise the user about Postal Service products and services, the purpose statement is expanded to include that secondary use. Routine use 2 is changed to reflect the change in name from postage meter to postage evidencing system.

The system changes are not expected to have an effect on individual privacy rights. Most information kept within the system pertains to businesses rather than individuals. To the extent information is kept about individuals, the changes do not in any manner alter the nature or increase the types of personal information already kept in the system. In fact, the amount of personal information kept is narrowed to the extent that the Postal Service will no

longer capture and maintain the tax identification number (that might also be an individual's social security number). Information collected from the generation of the Information Based Indicia receives the same security as that collected by the metered postage process. Systems security has not been diminished. Moreover, the Postal Service has given careful attention to ensure secure transmission of information it receives electronically from the authorized product service providers. A customer applying online for a postage evidencing system must provide certain information to the service provider that is needed to process the request for a license. The service provider then sends the information to the Postal Service in a ''secure session'' established by Secure Sockets Layer (SSL) or equivalent technology. These technologies encrypt or scramble the transmitted information so it is virtually impossible for anyone other than the Postal Service and its authorized product service providers to read it.

In addition to the protections imposed by the Privacy Act, the Postal Reorganization Act imposes restrictions on the disclosure of information of the type kept within system USPS 140.020. The Act does not permit the Postal Service to disclose lists of postal customers or other persons. It also does not require the Postal Service to disclose information that could cause competitive harm. The Postal Service has traditionally considered the mailing habits of a particular customer exempt from disclosure under the Postal Reorganization Act.

Pursuant to 5 U.S.C. 552a(e)(11), interested persons are invited to submit written data, views, or arguments on this proposal. A report of the system changes has been sent to Congress and to the Office of Management and Budget for their evaluation.

USPS Privacy Act system 140.020 was last published in its entirety in the **Federal Register** on October 26, 1989 (54 FR 43701) and was amended on May 12, 1997 (62 FR 25980–25981). It is proposed that the system description be amended as follows:

USPS 140.020

SYSTEM NAME:

[CHANGE TO READ:]

Postage—Postage Evidencing System Records, 140.020.

SYSTEM LOCATION:

[CHANGE TO READ:]

Retail, Postal Service Headquarters; District offices; the Information Systems Support Center, Eagan, MN; and authorized postage evidencing system service providers.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

[CHANGE TO READ:]

Postage Evidencing System users.

CATEGORIES OF RECORDS IN THE SYSTEM:

[CHANGE TO READ:]

Customer name and address, change of address information, corporate business customer information (CBCIS) number, business profile information, estimated annual postage and annual percentage of mail by type, type of usage (customer, postal, or government), post office where mail is entered, license number, date of issuance, ascending and descending register values, device identification number, device model number, certificate serial number, amount and date of postage purchases, amount of unused postage refunded, contact telephone number, date, destination delivery point (ZIP+4) and rate category of each indicium created, and transaction documents.

* * * * *

PURPOSE(S):

[CHANGE TO READ:]

To enable responsible administration of postage evidencing system activities and, secondarily, to provide information about postal products and services to customers who use postage evidencing systems.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

* * * * *

2. [CHANGE TO READ:]

Records or information from this system may be disclosed to an authorized postage evidencing system service provider or its affiliates, dealers, subsidiaries, or franchises for administering the postage evidencing system program. Release will be limited to relevant information about that service provider's customers only.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

* * * * *

RETRIEVABILITY:

[CHANGE TO READ:]

By customer name and by numeric file of postage evidencing systems identification number or customer license number.

SAFEGUARDS:

[CHANGE TO READ:]

Paper records and computer storage media are maintained in closed file cabinets in secured facilities; automated records are protected by computer password. Information is obtained from users over the Internet and transmitted electronically to the Postal Service by authorized postage evidencing system service providers in a ''secure session'' established by the Secure Sockets Layer (SSL) or equivalent technology.

RETENTION AND DISPOSAL:

[CHANGE TO READ:]

Records are maintained for a period of up to four years after final entry or the duration of the license and then destroyed by shredding.

* * * * *

NOTIFICATION PROCEDURE:

[CHANGE TO READ:]

Individuals wanting to know whether information about them is maintained in this system of records must address inquiries in writing to: Manager, Metering Technology Management, United States Postal Service, 475 L'Enfant Plaza SW, Room 8430, Washington, DC 20260–2444. When making this request, an individual must supply the license number and his or her name as it appears on the postage evidencing system license.

* * * * *

RECORD SOURCE CATEGORIES:

[CHANGE TO READ:]

License applications, licenses, postal officials administering postage evidencing systems, postage evidencing system activity reports, refund requests for unused postage, postage evidencing system resetting reports, log file entries, and authorized service providers of postage evidencing systems.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 99–34050 Filed 12–30–99; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–24220; File No. 812–11818]

IDS Life Insurance Company, et al.

December 23, 1999.

AGENCY: Securities and Exchange Commission (the ''Commission'' or ''SEC'').

ACTION: Notice of Application for an order under Section 6(c) of the Investment Company Act of 1940 (the ''1940 Act'') granting exemptions from the provisions of Sections 2(a)(32), 22(c), and 27(i)(2)(A) of the 1940 Act and Rule 22c–1 thereunder to permit the recapture of credits applied to

contributions made under certain deferred variable annuity contracts.

SUMMARY OF APPLICATION: Applicants seek an order under Section 6(c) of the 1940 Act to the extent necessary to permit the issuance and, under specified circumstances, the subsequent recapture of certain credits applied to contributions made under: (i) certain deferred variable annuity contracts that IDS Life or American Enterprise will issue through the Accounts (''Contracts''), and (ii) contracts that the Insurance Companies may in the future issue through the Accounts or any Future Account that are substantially similar in all material respects to the Contracts (''Future Contracts''). Applicants also request that the order being sought extend to any other National Association of Securities Dealers, Inc. (''NASD'') member broker-dealer controlling or controlled by, or under common control with the Insurance Companies, whether existing or created in the future, that serves as a distributor or principal underwriter of the Contracts or any Future Contracts offered through the Accounts or any Future Account (collectively ''Affiliated Broker-Dealers'').

APPLICANTS: IDS Life Insurance Company (''IDS Life''), American Centurion Life Assurance Company (''American Centurion Life''), IDS Life Insurance Company of New York (''IDS Life NY'') American Enterprise Life Insurance Company (''American Enterprise Life'') (collectively, the ''Insurance Companies''), American Express Financial Advisors, Inc. (''AEFA''), IDS Life Variable Account 10 (''IDS Account 10''), American Enterprise Variable Annuity Account (''American Enterprise Account,'' and together with IDS Account 10, the ''Account'') (collectively, ''Applicants'').

FILING DATE: The application was filed on October 15, 1999, and amended and restated on December 7, 1999.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicant with a copy of the request, in person or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on January 17, 2000, and should be accompanied by proof of service on the Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary of the SEC.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Applicants, c/o IDS Life Insurance Company, IDS Tower 10, T27/52, Minneapolis, Minnesota 55440–0010, Attn: Mary Ellyn Minenko.

FOR FURTHER INFORMATION CONTACT: Zandra Y. Bailes, Senior Counsel, or Susan M. Olsen, Branch Chief; Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from the SEC's Public Reference Branch, 450 Fifth St., N.W., Washington, D.C. 20549–0102 (tel. (202) 942–8090).

Applicants Representations

1. IDS Life is a stock life insurance company organized under the laws of the State of Minnesota. IDS Life is registered with the Commission as a broker-dealer under the Securities Exchange Act of 1934 (the ''1934 Act'') and is a member of the NASD. IDS Life is a wholly-owned subsidiary of American Express Financial Corporation (''AEFC''). IDS Account 10 was established on August 23, 1994, pursuant to authority granted under a resolution of IDS Life's Board of Directors. IDS Life is the issuer and principal underwriter of the Contracts funded through IDS Account 10 (the ''IDS Account 10 Contracts''). IDS Life may in the future issue Future Contracts through IDS Account 10 or through Future Accounts, for which IDS Life also may serve as principal underwriter.

2. American Enterprise Life is a stock life insurance company organized under the laws of the State of Indiana. American Enterprise Life is a wholly-owned subsidiary of IDS Life. American Enterprise Account was established on July 15, 1987, pursuant to authority granted under a resolution of American Enterprise Life's Board of Directors. American Enterprise Life serves as the issuer for the Contracts funded through American Enterprise Account (the ''American Enterprise Account Contract''). American Enterprise Life may in the future issue Future Contracts through American Enterprise Account or through Future Accounts.

3. IDS Life NY is a stock like insurance company organized under the laws of the State of New York. IDS Life NY is a wholly-owned subsidiary of IDS Life. IDS Life NY may in the future issue Future Contracts through Future Accounts.

4. American Centurion Life is a stock insurance company organized under the laws of the State of New York. American Centurion Life is a wholly-owned subsidiary of IDS Life. American Centurion Life may in the future issue Future Contracts through Future Accounts.

5. AEFA serves as the principal underwriter for the American Enterprise Account Contracts and as distributor of the IDS Account 10 Contracts. AEFA is registered with the Commission as a broker-dealer under the 1934 Act and is a member of the NASD. The IDS Account 10 Contracts will be offered through registered representatives of AEFA and its affiliates who are registered broker-dealers under the 1934 Act and NASD members. The American Enterprise Account Contracts will be distributed by broker-dealers who are registered under the 1934 Act and NASD members and who have entered into distribution agreements with AEFA and American Enterprise Life and through AEFA. AEFA, or any successor or affiliated entity, may act as principal underwriter for any Future Account issued by American Enterprise Life or as distributor for any Future Contracts issued by IDS Life in the future.

6. IDS Account 10 is a segregated asset account of IDS Life, and American Enterprise Account is a segregated asset account of American Enterprise Life. Each Account and its component subaccounts are registered together with the Commission as a single unit investment trust under the 1940 Act. The respective Account will fund the variable benefits available under the Contracts. The offering of the Contracts is registered under the Securities Act of 1933 (the ''1933 Act''). IDS Life and IDS Account 10 filed a Form N–4 Registration Statement under the 1933 Act relating to the Contracts on September 20, 1999 (Rule 497 filing). American Enterprise Life and American Enterprise Account filed a Form N–4 Registration Statement on August 19, 1999 under the 1933 Act relating to the Contracts.

7. That portion of the respective assets of the Accounts that is equal to the reserves and other Contract liabilities with respect to the Accounts is not chargeable with liabilities arising out of any other business of IDS Life of American Enterprise Life, as the case may be. Any income, gains or losses, realized or unrealized, from assets allocated to the Accounts are, in accordance with the respective Accounts' Contracts, credited to or charged against the Accounts, without

regard to other income, gains or losses of IDS Life or American Enterprise Life, as the case may be.

8. An IDS Account 10 Contract may be issued as a non-qualified annuity (''NQ'') for after tax contributions only, or as a qualified annuity under the following retirement plans: (i) Individual Retirement Annuities (''IRAs''), (ii) Simplified Employee Pension (''SEP'') plans, (iii) Section 401(k) plans, (iv) custodial and trusteed pension and profit sharing plans, or (v) Tax-Sheltered Annuities (''TSAs''). An IDS Account 10 Contract may be purchased: (i) with a minimum initial payment of $1,000 for qualified plans or $2,000 for nonqualified plans, or (ii) in minimum installments or $50 per month or $23.08 biweekly under a scheduled plan. Unless payments are made by installments under a scheduled payment plan, an owner may make additional payments, subsequent to the initial payment (initial payments and subsequent additional payments are collectively referred to herein as ''Purchase Payments''). Maximum limitations on Purchase Payments are imposed for the first year and subsequent years, depending on the age of the owner or annuitant.

9. Owners of IDS Account 10 Contracts may allocate their Purchase Payments among a number of subaccounts of IDS Account 10. The subaccounts are referred to as ''Investment Funds.'' Each Investment Fund will invest in shares of a corresponding portfolio (''Portfolio'') of American Express Variable Portfolio Funds (''AXP Funds''), AIM Variable Insurance Funds, Inc. (''AIM Funds''), American Century Variable Portfolios, Inc. (''American Century VP''), Fidelity Variable Insurance Products Funds (Service Class) (''Fidelity VIP Funds''), Franklin Templeton Variable Insurance Products Trust (Class 2) (''Franklin Templeton VIP Trust''), Goldman Sachs Variable Insurance Trust (''Goldman Sachs VIT''), Lazard Retirement Series, Inc. (''Lazard RSI''), Putnam Variable Trust (''Putnam VT''), Royce Capital Fund, Third Avenue Variable Series Trust, Wagner Advisors Trust, and Warburg Pincus Trust. IDS Life, at a later date, may decide to create additional Investment Fund(s) to invest in any additional Portfolio(s) as may now or in the future be available. IDS Life, from time to time, also may combine or eliminate Investment Funds.

10. The IDS Account 10 Contract provides for various surrender options, annuity benefits and annuity payout options, as well as transfer privileges among Investment Funds, dollar cost averaging, and other features. The IDS Account 10 Contract contains the following charges: (i) a contingent deferred sales charge (''CDSC'') as a percentage of Purchase Payment surrendered, depending on the surrender charge schedule the owner selected at the time of application. With respect to a 7-year surrender charge schedule, the CDSC is 7% in years 1–3, 6% in year 4, 5% in year 5, 4% in year 6, 2% in year 7, and 0% thereafter. With respect to a 10-year surrender charge schedule, the CDSC is 8% in years 1–3, 7% in years 4–5, 6% in year 6, 5% in year 7, 4% in year 8, 3% in year 9, 2% in year 10, and 0% thereafter; (ii) a $30 annual administrative expense charge; (iii) a mortality and expense risk fee of 0.75% for qualified annuities and 0.95% for NQs; and (iv) any applicable state or local premium taxes up to 3.5%, depending on the owner's state of residence or the state in which the contract was sold. In addition, assets invested in Investment Funds are charged with the annual operating expenses of those Funds.

11. Each time IDS receives a Purchase Payment from an owner, it will allocate to the owner's IDS Account 10 a credit (''Credit'') equal to: (i) 1% of each Purchase Payment received if the owner elected the ten-year surrender charge schedule for the IDS Account 10 Contract, or if the owner elected the seven-year surrender charge schedule and the initial Purchase Payment is at least $100,000; and (ii) 2% of each Purchase Payment received if the owner elected the ten-year surrender charge schedule and the initial Purchase Payment is at least $100,000. IDS Life will allocate Credits according to the allocation instructions in effect for the Purchase Payments.

12. Applicants represent that the percentage amount of the Credit under the IDS Account 10 and the American Enterprise Account Contracts described in the application could change for enhanced versions of the Contracts issued in the future, but will not exceed 8%. In addition, the percentage amount of the Credit under Future Contracts may differ from the Credit under the Contracts, but will not exceed 8%.

13. IDS Life will fund Credits from its general account assets. IDS Life will recapture certain Credits from an owner under the following circumstances: (i) any Credit applied if the owner returns the IDS Account 10 Contract for a refund during the 10-day free look period; (ii) Credits applied within twelve months preceding the date of death that results in a lump sum death benefit under the IDS Account 10 Contract (as described herein); or (iii) Credits applied within twelve months preceding a request for a surrender due to an event where no CDSC is incurred (''Contingent Event''). Applicants represent that the amount the owner receives in each of these circumstances will always at least equal and normally will exceed the surrender value (Contract value minus any applicable charges) of the IDS Account 10 Contract.

14. The free look period is the 10-day period during which an owner may return a Contract after it has been delivered and receive a full refund of the Contract value, less any Credits up to the maximum surrender charge under the Contract. No other charges will apply to the refund, but the owner bears the investment risk from the time of purchase until he or she returns the contract. The refund amount may be more or less than the Purchase Payment the owner made, unless the law requires that the full amount of the Purchase Payment be refunded.

15. A Contingent Event is an owner's or annuitant's confinement to a nursing home, disability, terminal illness or unemployment. Under the IDS Account 10 Contract, the only Contingent Event currently is for nursing home confinement, but the others are expected to be added later by endorsements.

16. The IDS Account 10 Contract death benefit provision states that, upon the earlier of the owner's or annuitant's death before annuity payouts begin and while the Contract is in force, IDS Life will pay the following death benefits less any Credits applied to the Contract in the preceding twelve months (to the extent a death benefit includes contract value credits): (i) if both the owner and annuitant are age 80 or younger on the date of death, the beneficiary receives the greatest of (a) the Contract value; (b) Purchase Payments, minus any adjusted partial surrenders; or (c) the Contract value of the most recent sixth contract anniversary, plus any purchase payments paid, and minus any adjusted partial surrenders since that anniversary; or (ii) if either the owner or annuitant are age 81 or older on the date of death, the beneficiary receives the greater of (a) Contract value; or (b) Purchase Payments, minus any adjusted partial surrenders.

17. An American Enterprise Account Contract may be issued as an NQ or as a qualified annuity under the following retirement plans: (i) IRAs, including Roth IRAs, or (ii) SEP plans. There are two different Contracts supported by American Enterprise Account: Wells Fargo Advantage Credit Variable Annuity (''Advantage Contract'') and Signature Plus Variable Annuity

(''Signature Contract''). An Advantage Contract sold through AEFA currently may be issued only as an NQ. The American Enterprise Account Contract differs from the IDS Account 10 contract in that the American Enterprise Account Contract offers: (i) a Guaranteed Period Account feature that involves a market value adjustment (''MVA''); (ii) optional death benefit riders; and (iii) guaranteed minimum income riders.

18. Purchase Payments allocated to Guaranteed Period Accounts are held in a ''nonunitized'' separate account established under Indiana law. The assets in the Guaranteed Period Account will not be charged with the liabilities of any other separate account or of American Enterprise Life's general business. Each Guarantee Period will provide a guarantee of the Purchase Payment allocated thereto and an interest rate that is declared at the time of the allocation. An upward or downward adjustment, or MVA, will be applied to a Guaranteed Period Account upon a withdrawal or transfer prior to the end of the Guarantee Period.

19. An Advantage Contract may be purchased: (i) with a minimum initial payment of $2,000 (the minimum initial payment for an Advantage Contract sold through AEFA is $100,000); or (ii) $50 if enrolled in the Systematic Investment Program (''SIP''). A Signature Contract may be purchased: (i) with a minimum initial payment of $25,000; or (ii) $50 if enrolled in the SIP. A Guarantee Period Account requires a minimum initial payment of $1,000. Subsequent additional Purchase Payments require a minimum of $50 for SIP payments and $100 for non-SIP payments. The maximum total Purchase Payments under an American Enterprise Account Contract is $1,000,000 (without prior approval). The owner of an American Enterprise Account Contract also may select a withdrawal charge period of six or eight years at the time of application. Only the eight-year withdrawal charge period is available under an Advantage Contract sold through AEFA.

20. Owners of the Advantage Contract may allocate the Purchase Payments among the Investment Funds under the Contract. Each Investment Fund will invest in shares of portfolios of AXP Funds, AIM Funds, Franklin Templeton VIP Trust, Goldman Sachs VIT, Putnam VT, Dreyfus Socially Responsible Growth Fund, Inc., MFS Variable Insurance Trust (''MFS VIT''), and Wells Fargo Variable Trust Funds (''Wells Fargo VT'').

21. Owners of the Signature Contract may allocate their Purchase Payments among the Investment Funds under the Contract. Each Investment Fund will invest in shares of Portfolios of AXP Funds, AJM Funds, Alliance Variable Products Series Funds, Baron Capital Funds, Fidelity VIP Funds, Franklin Templeton VIP Trust, Goldman Sachs VIT, J.P. Morgan Series Trust 11, Lazard RSI, MFS VIT, Royce Capital Fund, Wanger Advisors Trust, Warburg Pincus Trust, and Wells Fargo VT.

22. An American Enterprise Account Contract provides for various withdrawal options, annuity benefits and payout annuity options, as well as transfer privileges among Investment Funds, dollar cost averaging, asset rebalancing, and other features. The Advantage Contracts contain the following charges: (i) $30 annual administrative charge (waived at $50,000); (ii) a 0.15% variable account administrative charge; (iii) a mortality and expense risk fee of: 1.35% for 6-year withdrawal schedule, 1.10% for 8-year withdrawal schedule, and an additional charge of 0.20% if the Enhanced Death Benefit Rider is selected; (iv) an annual fee based on a modified Guaranteed Income Benefit Base (currently at 0.30%) if the Guaranteed Minimum Income Benefit Rider is selected; (v) a CDSC as a percentage of Purchase Payment withdrawn, depending on the withdrawal charge schedule selected (the CDSC is as follows for: (a) a 6-year surrender charge schedule: 8% in years 1–3, 6% in year 4, 4% in year 5, 2% in year 6, and 0% thereafter; and (b) an 8-year surrender charge schedule: 8% in years 1–5, 6% in year 6, 4% in year 7, 2% in year 8 and 0% thereafter); (vi) any applicable state or local premium taxes; and (vii) the annual operating expenses of the Investment Funds.

23. The Signature Contracts contain the following charges: (i) $40 annual administrative charge (waived at $100,000); (ii) a 0.15% variable account administrative charge; (iii) a mortality and expense risk fee of: 1.45% for 9-year withdrawal schedule (including either the Maximum Anniversary Death Benefit Rider or the 5% Accumulation Death Benefit Rider), 1.35% for 9-year withdrawal schedule without either of the death benefit riders; (iv) an annual fee based on a modified Guaranteed Income Benefit Base (currently at 0.30%) if the Guaranteed Minimum Income Benefit Rider (5% Accumulation Benefit Base) is selected; (v) a CDSC as a percentage of Purchase Payment withdrawn of 8% in years 1–4, 7% in year 5, 6% in years 6 and 7, 4% in year 8, 2% in year 9, and 0% thereafter, (vi) any Applicable state or local premium taxes; and (vii) the annual operating expenses of the Investment Funds.

24. Each time American Enterprise Life receives a Purchase Payment from an owner, it will allocate the owner's American Enterprise Account a Credit as a percentage of the net current payment (current payment less the amount of partial withdrawals that exceed all prior Purchase Payments) as follows: (i) with respect to an Advantage Contract: 1% for less than $10,000, 2% for $10,000 to less than 1 million, 3% for $1 million to less than 5 million, and 4% for $5 million and over; and (ii) with respect to a Signature Contract: 3% for $25,000 to less than $100,000, 4% for $100,000 to less than $1 million, and 5% for $1 million and over. American Enterprise Life will allocate Credits according to the allocation instructions in effect for the Purchase Payments.

25. American Enterprise Life will fund Credits from its general account assets. American Enterprise Life will recapture certain Credits from an owner under the following circumstances: (i) any Credit applied if the owner returns the American Enterprise Account Contract for a refund during a 10-day free look period; (ii) Credits applied within twelve months preceding the date of death that results in a death benefit (including death benefits under the Enhanced Death Benefit Rider, Maximum Anniversary Value Death Benefit Rider, and 5% Accumulation Death Benefit Rider) under the American Enterprise Account Contract; or (iii) Credits applied within twelve months preceding a request for a withdrawal due to any Contingent Event. The amount the owner receives under these circumstances will always equal or exceed the surrender value of the Contract.

26. The Advantage Contract death benefit provision states that, if the owner or annuitant dies before annuity payouts begin while the Contract is in force, American Enterprise Life will pay the beneficiary the greatest of the following less any Credits added to the Contract in the last 12 months: (i) the Contract value; (ii) the total Purchase Payments paid, plus Credits, and minus any adjusted partial withdrawals; or (iii) the maximum anniversary value immediately preceding the date of the death, plus the dollar amount of any Purchase Payments since that anniversary, plus Credits, and minus any adjusted partial withdrawals since that anniversary.

27. The Advantage Contract offers an Enhanced Death Benefit Rider, which requires the owner or the annuitant to be age 79 or younger on the Contract date. The Enhanced Death Benefit Rider provides that if the owner or the annuitant dies before annuity payouts

begin while the Contract is in force, American Enterprise Life will pay the beneficiary the greatest of the following specified amounts, less any Credits added in the last twelve months: (i) the contract value; (ii) the total Purchase Payments paid, plus Credits, and minus any adjusted partial withdrawals; (iii) the ''maximum anniversary value'' immediately preceding the date of death, plus any Purchase Payments since that anniversary, plus Credits, and minus any adjusted partial withdrawals since that anniversary; or (iv) the Variable Account 5% Floor (the sum of the value in the fixed accounts plus the accumulated initial purchase payments allocated to the subaccounts plus 5%).

28. The Signature Contract death benefit provision states that, if the owner or annuitant dies before annuity payouts begin while the contract is in force, American Enterprise Life will pay the beneficiary the greatest of the following less any Credits added to the contract in the last 12 months: (i) the Contract value; or (ii) the total Purchase Payments paid, plus Credits, and minus any adjusted partial withdrawals.

29. The Signature Contract has two other death benefit options offered as riders, which require the owner or the annuitant to be age 79 or younger on the Contract date. The Maximum Anniversary Value Death Benefit Rider provides that if the owner or the annuitant dies before annuity payouts begin while the Contract is in force, American Enterprise Life will pay the beneficiary the greatest of the following specified amounts, less any Credits added in the last twelve months: (i) the Contract value; (ii) the total Purchase Payments paid, plus Credits, and minus any adjusted partial withdrawals; or (iii) the maximum anniversary value immediately preceding the date of death, plus any Purchase Payments since that anniversary, plus Credits, and minus any adjusted partial withdrawals since that anniversary.

30. The Signature Contract also offers the 5% Accumulation Death Benefit Rider option, which provides that if the owner or annuitant dies before annuity payouts begin while the Contract is in force, American Enterprise Life will pay the beneficiary the greatest of the following specified amounts, less any Credits added in the last twelve months: (i) the Contract value; (ii) the total Purchase Payments paid, plus Credits, and minus any adjusted partial withdrawals; or (iii) the Variable Account 5% Floor.

31. Applicants seek exemption pursuant to Section 6(c) from Sections 2(a)(32), 22(c), and 27(i)(2)(A) of the Act and Rule 22c–1 thereunder to the extent necessary to permit the Insurance Companies to issue Contracts and Future Contracts that provide for Credits upon the receipt of Purchase Payments, and to recapture certain Credits in the following instances: (i) any Credit applied when an owner returns a Contract to the Insurance Companies for a refund during the free look period, and (ii) Credits applied within twelve months preceding the date of death that results in a death benefit as described herein (including death benefits under the Enhanced Death Benefit Rider and Maximum Anniversary Value Death Benefit Rider under an American Enterprise Account contract); and (iii) Credits applied within twelve months preceding a request for a surrender or withdrawal charge waiver due to any Contingent Event.

Applicants' Legal Analysis

1. Section 6(c) of the 1940 Act authorizes the Commission to exempt any person, security or transaction, or any class or classes of persons, securities or transactions from the provisions of the 1940 Act and the rules promulgated thereunder if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act. Applicants request that the Commission, pursuant to Section 6(c) of the 1940 Act, grant the exemptions summarized above with respect to the Contracts and any Future Contracts funded by the Accounts or Future Accounts, that are issued by the Insurance Companies and underwritten or distributed by IDS Life, AEFA, or Affiliated Broker-Dealers. Applicants undertake that Future Contracts funded by the Separate Accounts or any Future Account will be similar in all material respects to the Contracts. Applicants believe that the requested exemptions are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

2. Applicants represent that it is not administratively feasible to track the Credit amount in any of the Accounts after the Credit is applied. Accordingly, the asset-based charges applicable to the Accounts will be assessed against the entire amounts held in the respective Accounts, including the Credit amount, during the free look period and the three year period prior to annuitization. As a result, during such periods, the aggregate asset-based charges assessed against an owner's annuity account value will be higher than those that would be charged if the owner's annuity account value did not include the Credit.

3. Subsection (i) of Section 27 of the 1940 Act provides that Section 27 does not apply to any registered separate account funding variable insurance contracts, or to the sponsoring insurance company and principal underwriter of such account, except as provided in paragraph (2) of the subsection. Paragraph (2) provides that it shall be unlawful for such a separate account or sponsoring insurance company to sell a contract funded by the registered separate account unless, among other things, such contract is a redeemable security. Section 2(a)(32) defines ''redeemable security'' as any security, other than short-term paper, under the terms of which the holder, upon presentation to the issuer, is entitled to receive approximately his proportionate share of the issuer's current net assets, or the cash equivalent thereof.

4. Applicants submit that the recapture of the Credit amount in the circumstances set forth above would not deprive an owner of his or her proportionate share of the issuer's current net assets. Applicants state that an owner's interest in the Credit amount allocated to his or her annuity account value upon receipt of an initial Purchase Payment is not vested until the applicable free look period has expired without return of the Contract. Similarly, Applicants state that an owner's interest in the Credit amounts allocated to his or her annuity account within twelve months preceding a Contingent Event also is not vested. Until the right to recapture has expired and any Credit amount is vested, Applicants submit that the Insurance Companies retain the right and interest in the Credit amount, although not in the earnings attributable to that amount. Thus, Applicants argue that when the Insurance Companies recapture any Credit, they are merely retrieving their own assets, and the owner has not been deprived of a proportionate share of the applicable Account's assets because his or her interest in the Credit amount has not vested.

5. In addition, Applicants state that permitting an owner to retain a Credit amount under a Contract upon the exercise of the free look privilege would not only be unfair, but would also encourage individuals to purchase a Contract with no intention of keeping it and returning it for a quick profit.

6. Furthermore, Applicants state that the recapture of Credit amounts within twelve months preceding a Contingent Event is designed to provide the Insurance Companies with a measure of

protection against anti-selection. Applicants state that the risk here is that, rather than spreading Purchase Payments over a number of years, an owner might make very large Purchase Payments shortly before the occurrence of a Contingent Event, thereby leaving the Insurance Companies little time to recover the cost of the Credits. As noted earlier, the amounts recaptured equal the Credits provided by the Insurance Companies from their general account assets, and any gain would remain a part of the owner's Contract value. In addition, the amount the owner will receive in any of the circumstances where Credits are recaptured will always equal or exceed the surrender value of the Contract.

7. Applicants represent that the Credit will be attractive to and in the interest of investors because it will permit owners to put 101% to 105% of their Purchase Payments to work for them in the selected Investment Funds. In addition, the owner will retain any earnings attributable to the Credit, as well as the principal Credit amount once vested after twelve months if the Contingent Events set forth in the application are satisfied.

8. Further, Applicants submit that the recapture of any Credit only applies in relation to the risk of anti-selection against the Insurance Companies. In the context of the Contingent Events described in the application, anti-selection can generally be described as a risk that Contract owners obtain an undue advantage based on elements of fairness to the Insurance Companies and the actuarial and other factors they take into account in designing the Contracts. The Insurance Companies provide the Credits from their general account on a guaranteed basis. Thus, the Insurance Companies undertake a financial obligation that contemplates the retention of the Contracts by their owners over an extended period, consistent with the long-term nature of retirement planning. The Insurance Companies generally expect to recover their costs, including Credits, over an anticipated duration while a Contract is in force. The right to recapture Credits applied to Purchase Payments made within twelve months preceding the applicable contingency protects the Insurance Companies against the risk that a Contract owner will make additional Purchase Payments to or purchase a contract with the knowledge that the contingency that triggers payment of a benefit is likely or about to occur. With respect to refunds paid upon the return of Contracts within the free look period, the amount payable by the Insurance Companies must be reduced by the Credit amount. Otherwise, purchasers could apply for Contracts for the sole purpose of exercising the free look provision and making a quick profit.

9. Applicants submit that the provisions for recapture of any Credit under the Contracts does not, and any such Future Contract provisions will not, violate Section 2(a)(32) and 27(i)(2)(A) of the 1940 Act. However, to avoid any uncertainty as to full compliance with the 1940 Act, Applicants request an exemption from those Sections, to the extent deemed necessary, to permit the recapture of any Credit under the circumstances summarized herein with respect to Contracts and Future Contracts, without the loss of the relief from section 27 provided by Section 27(i).

10. Section 22(c) of the 1940 Act authorizes the Commission to make rules and regulations applicable to registered investment companies and to principal underwriters of; and dealers in, the redeemable securities of any registered investment company, whether or not members of any securities association, to the same extent, covering the same subject matter, and for the accomplishment of the same ends as are prescribed in Section 22(a) in respect of the rules which may be made by a registered securities association governing its members. Rule 22c–1 thereunder prohibits a registered investment company issuing any redeemable security, a person designated in such issuer's prospectus as authorized to consummate transactions in any such security, and a principal underwriter of; or dealer in, such security, from selling, redeeming, or repurchasing any such security except at a price based on the current net asset value of such security which is next computed after receipt of a tender of such security for redemption or of an order to purchase or sell such security.

11. Arguably, the Insurance Companies' recapture of the Credit might be viewed as resulting in the redemption of redeemable securities for a price other than one based on the current net asset value of the Accounts. Applicants contend, however, that recapture of the Credit does not violate Section 22(c) and Rule 22c–1. Applicants argue that the recapture of the Credit does not involve either of the evils that Rule 22c–1 was intended to eliminate or reduce, namely: (i) The dilution of the value of outstanding redeemable securities of registered investment companies through their sale at a price below net asset value or repurchase at a price above it, and (ii) other unfair results including speculative trading practices. See Adoption of Rule 22c–1 under the 1940 Act, Investment Company Release No. 5519 (Oct. 16, 1968). To effect a recapture of a Credit, the Insurance Companies will redeem interests in an owner's annuity account at a price determined on the basis of current net asset value of the Account. The amount recaptured will equal the amount of the Credit that the Insurance Companies paid out of their general account assets. Although the owner will be entitled to retain any investment gain attributable to the Credit, the amount of such gain will be determined on the basis of the current net asset value of the Account. Thus, no dilution will occur upon the recapture of the Credit. Applicants also submit that the second harm that Rule 22c–1 was designed to address, namely, speculative trading practices calculated to take advantage of backward pricing, will not occur as a result of the recapture of the Credit. However, to avoid any uncertainty as to All compliance with the 1940 Act, Applicants request an exemption from the provisions of Section 22(c) of Rule 22c–1 to the extent deemed necessary to permit them to recapture the Credit under the Contracts and Future Contacts.

Conclusion

Applicants submit that their request for an order is appropriate in the public interest. Applicants state that such an order would promote competitiveness in the variable annuity market by eliminating the need to file redundant exemptive applications, thereby reducing administrative expenses and maximizing the efficient use of Applicants' resources. Applicants argue that investors would not receive any benefit or additional protection by requiring Applicants to repeatedly seek exemptive relief that would present no issue under the 1940 act that has not already been addressed in their application described herein. Applicants submit that having them file additional applications would impair their ability effectively to take advantage of business opportunities as they arise. Further, Applicants state that if they were required repeatedly to seek exemptive relief with respect to the same issues addressed in the application described herein, investors would not receive any benefit or additional protection thereby.

Applicants submit, based on the grounds summarized above, that their exemptive request meets the standards set out in Section 6(c) of the 1940 Act, namely, that the exemptions requested

are necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act, and that, therefore, the Commission should grant the requested order.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–34014 Filed 12–30–99 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–24221; File No. 812–11824]

Nationwide Life Insurance Company, et al.

December 23, 1999.

AGENCY: The Securities and Exchange Commission (the ''Commission'').

ACTION: Notice of Application for an order pursuant to Section 6(c) of the Investment Company Act of 1940 (the ''1940 Act'') granting exemptions from the provisions of Sections 2(a)(32), 22(c), and 27(i)(2)(A) of the 1940 Act and Rule 22c–1 thereunder to permit the recapture of credits applied to purchase payments made under certain variable annuity contracts.

SUMMARY OF APPLICATION: Applicants seek an order under Section 6(c) of the 1940 Act to the extent necessary to permit, under specified circumstances, the recapture of credits applied to contributions made under the contracts (the ''Contracts'') that Nationwide will issue through the Separate Accounts, as well as other contracts that Nationwide may issue in the future through Future Separate Accounts that are substantially similar in all material respects to the Contracts (the ''Future Contracts''). Applicants also request that the order being sought extend to any other National Association of Securities Dealers, Inc. (''NASD'') member broker-dealer controlling or controlled by, or under common control with, Nationwide that may in the future serve as general distributor-principal underwriter of variable annuity contracts substantially similar in all material respects to those offered by the Separate Accounts.

APPLICANTS: Nationwide Life Insurance Company (''NLIC''), Nationwide Life and Annuity Insurance Company (''NLAIC'') (NLIC and NLAIC shall be collectively referred to as ''Nationwide''), Nationwide Variable Account—9 and Nationwide Fidelity Advisor Variable Account (collectively, the ''Separate Accounts'') and any current or future separate accounts of Nationwide (''Future Separate Accounts'') that may in the future offer variable annuity contracts substantially similar in all material respects to the contracts and supported by the Separate Accounts, Nationwide Advisory Services, Inc. (''NAS''), Fidelity Investment Institutional Services Company, Inc. (''FIISC''), and any other NASD member broker-dealer controlling or controlled by, or under common control with, Nationwide that may in the future serve as general distributor-principal underwriter of variable annuity contracts substantially similar in all material respects to those offered by the Separate Accounts (collectively ''Applicants'').

FILING DATE: The Application was filed on October 6, 1999, and amended and restated on December 23, 1999.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on January 17, 1999, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issue contested. Persons may request notification of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Applicants, c/o Nationwide Life Insurance Company, One Nationwide Plaza 01–09–V3, Columbus, Ohio 43215, Attn: Heather Harker, Esq.

FOR FURTHER INFORMATION CONTACT: Jane G. Heinrichs, Senior Counsel, at (202) 942–0699, or Susan M. Olson, Branch Chief, at (202) 942–0672, Office of Insurance Products, Division of Investment Management.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from the Commission's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549–0102 (telephone (202) 942–8090).

Applicants' Representations

1. NLIC and NLAIC are stock life insurance companies organized under Ohio law. NLIC is licensed to do business in all fifty states, the District of Columbia and Puerto Rico. NLAIC is licensed to do business in 47 states. NLIC is a wholly owned subsidiary of Nationwide Financial Services, Inc., a holding company. NLAIC is a wholly owned subsidiary of NLIC.

2. Nationwide Variable Account–9 was established on May 21, 1997 and Nationwide Fidelity Advisor Variable Account was established on July 22, 1994. The Separate Accounts are segregated asset accounts of NLIC established under Ohio law for the purpose of funding variable annuity contracts. Any income, gains or losses, realized or unrealized, from assets allocated to the Separate Accounts, are in accordance with the respective Separate Accounts' contracts, credited to or charged against the Separate Accounts without regard to other income, gains or losses of Nationwide. The Separate Accounts are registered with the Commission as unit investment trusts under the 1940 Act.[1] The Separate Accounts fund variable annuity contracts which are registered with the Commission under the Securities Act of 1933 on Forms N–4.[2]

3. NAS and FIISC serve as general distributor-principal underwriter for Nationwide Variable Account–9 and Nationwide Fidelity Advisor Variable Account, respectively. Both entities are registered broker/dealers under the Securities Exchange Act of 1934.

4. The Contracts are sold to individuals as: (i) Non-qualified contracts which are governed for tax purposes by Section 72 of the Internal Revenue Code (the ''Code''); (ii) individual retirement annuities (IRAs), Roth IRAs, SEP IRAs or Simple IRAs which are governed by Section 408 of the Code; (iii) Tax Sheltered Annuities which are governed by Section 403(b) of the Code; or (iv) Investment-Only Contracts, sold to qualified plans governed by Section 401(a) of the Code.

5. The Contracts issued in conjunction with the Separate Accounts are identical in every material respect, except in the array of underlying mutual funds which comprise the variable investment options under the Contracts. Nationwide Variable Account–9 is currently divided into 41 sub-accounts; Nationwide Fidelity Advisor Variable Account is divided into 14 sub-accounts. The Contracts are combination fixed and variable contracts; investment allocations that

[1] File No. 811–8666.

[2] File No. 333–28995 for Nationwide Variable Account–9 and File No. 33–89560 for Nationwide Fidelity Advisor Variable Account.

are not directed to the sub-accounts may by directed to a fixed account supported by the Nationwide general account. In addition, investment allocations may be directed to one or more Guaranteed Term Options which are supported by a non-unitized separate account, effectively functioning as a segmented portion of the Nationwide general account.

6. The Contracts are flexible purchase payment contracts, meaning that additional purchase payments after the first may be made by Contract owners. Generally, the Contracts may be purchased with an initial purchase payment of $15,000; subsequent purchase payments of at least $1,000 may also be made. The Contracts assess a mortality and expense risk charge of 0.95%. In addition, the Contracts assess a contingent deferred sales charge (''CDSC'') of 7% of invested purchase payments in the first two years after the purchase payment is made. Thereafter, the CDSC declines by 1% each year until the eighth Contract year when the CDSC is eliminated. During each Contract year beginning with the first, the Contracts allow the Contract owner to withdraw 10% of all purchase payments without a CDSC. In addition, the CDSC is waived under a variety of other circumstances: upon the death of the annuitant; upon annuitization of the Contract (more than two years after the issue date of the Contract); whenever distributions from the Contract are necessary in order to meet minimum distribution requirements under the Internal Revenue Code; and, under an age-based ''free-withdrawal'' program, allowing Contract owners to make systematic withdrawals of certain Contract value percentages at specified ages without a CDSC.

7. A death benefit will be paid to a named beneficiary should the annuitant die before the annuity payment period has commenced. After two years from the date the Contract was issued, a Contract owner may elect to begin receiving annuity payments. The Contracts also provide features such as asset Rebalancing, dollar cost averaging and systematic withdrawals.

8. The basic Contract features may be modified or augmented by a number of ''rider options.'' The rider options permit Contract owners to elect certain Contract features or benefits that fit their particular needs. Generally, the election of a particular rider option will result in higher explicit expenses for Nationwide or an increased risk that charges associated with the Contract will be inadequate in relation to expenses. Thus, most of the rider options, once elected, result in an increase in the basic mortality and expense risk charge (0.95%). Rider options must be chosen at the time of application. Such rider options include: (1) A reduced purchase payment option; (2) a five-year CDSC option; (3) an additional withdrawal without charge and disability waiver option; (4) a 10 year and disability waiver; (5) a hardship waiver; (6) a one-year step up death benefit; (7) a 5% enhanced death benefit; and (8) a guaranteed minimum income benefit.

9. Nationwide intends to offer an additional rider option under the Contracts which, if elected at the time of application, will result in the crediting of a 3% bonus (the ''Credit'') on all purchase payments made during the first twelve months of the Contract. The Credit on the Contract owner's remitted purchase payments will be funded from the Nationwide general account and will be credited proportionately among the investment options chosen by the Contract owner. No extra amount will be credited to purchase payments made after the first twelve months of the Contract. For this rider option, an annualized fee of 0.45% of the daily net assets of the variable account will be deducted for the first seven Contract years. The option of either electing the extra Credit or not, allows prospective purchasers to choose between two different Separate Account charge structures over the first seven years of the Contract years. The option of either electing the extra Credit or not, allows prospective purchasers to choose between two different Separate Account charge structures over the first seven years of the Contract. If the Credit is elected, total Separate Account charges under the Contract will be an annualized rate of 1.40% of the daily net assets of the Separate Account for the first seven years of the Contract, assuming no other rider options are elected. If the Credit is not elected, total Separate Account charges will be an annualized rate of 0.95% of the daily net assets of the Separate Account for the first seven years of the Contract, once again assuming that no other rider options are elected. Under such circumstances, the decision to elect or decline the extra Credit option will depend primarily on whether the prospective purchaser believes it is more advantageous to have (a) a 1.40% Separate Account charge for first seven years of the Contract, plus the Credit, or (b) a 0.95% Separate Account charge for the first seven years of the Contract, without the Credit. Applicants state that it can be mathematically demonstrated that electing the Credit will yield a greater accumulated Contract value at the end of seven years when the underlying investment options produce a gross annualized return of greater than 7.75%. In other words, a gross annualized return of 7.755 on assets, assuming a 0.95% Separate Account charge deduction and no Credit, will produce the same accumulated Contract value at the end of seven years as a 7.75% gross annualized return, with a 1.40% Separate Account charge deduction plus the Credit. These figures assume no additional purchase payments are made after the first twelve months.

The following tables demonstrate hypothetical rates of return for Contracts with the extra credit option (1.40% total asset charges) and Contracts without the extra Credit option (0.95% total asset charges). the figures are based upon: (a) A $100,000 initial purchase payment with no additional purchase payments; (b) the deduction of Separate Account charges of an annualized rate of 0.95% (base Contract) and 1.40% (Contract with the Credit option) of the daily net asset value; and (c) an assumed annual rate of return before charges of 5.0%, 7.75% and 10.0% for all years for a period of 10 years.

5.00% RATE OF RETURN

Contract year	Base contract (0.95% total asset charges)	Contract with extra credit rider (1.40% total asset charges)
1	$104,050	$106,708
2	108,264	110,549
3	112,649	114,529
4	117,211	118,652
5	121,958	122,924
6	126,897	127,349
7	132,037	131,934
8	137,384	137,277
9	142,948	142,837
10	148,738	148,622

7.75% RATE OF RETURN

Contract year	Base contract (0.95% total asset charges)	Contract with extra credit rider (1.40% total asset charges)
1	$106,080	$109,541
2	114,062	116,496
3	121,819	123,894
4	130,102	131,761
5	138,949	140,128
6	148,398	149,026
7	158,489	158,489
8	169,266	169,266
9	180,776	180,777
10	193,069	193,069

10.00% RATE OF RETURN

Contract year	Base contract (0.95% total asset charges)	Contract with extra credit rider (1.40% total asset charges)
1	$109,050	$111,858
2	118,919	121,478
3	129,681	131,925
4	141,417	143,270
5	154,216	155,592
6	168,172	168,973
7	183,392	183,504
8	199,989	200,111
9	218,088	218,221
10	237,825	237,970

Applicants state that, to the extent permitted, tables similar to the table above may be shown in the prospectus and supplemental sales literature solely for the purpose of illustrating the breakpoint and the operation of the Contract.

After the end of the first seven Contract years, the 0.45% charge for the rider option will no longer be assessed and the Credit will be fully vested. Nationwide intends to administer the removal of the 0.45% rider option charge by decreasing the number of units and increasing the unit value of the sub-accounts in which the Contract owner was invested at the end of the seventh contract year. The process will be accomplished through the replacement of that class of units corresponding to the aggregate Separate Account charges which include the 0.4% rider option charge, with another class of units associated with aggregate Separate Account charges minus the 0.45% rider option charge. The later class of units will have a greater individual unit value than the former, therefore, a reduction in the number of units is necessary to ensure that Contract values will remain unaffected by this process. Although this is not the only method of accomplishing the elimination of the 0.45% rider option charge, Nationwide intends to use the method to minimize the different unit values that must be tracked and administered. Other than the change in unit values and number of units, the removal of the 0.45% charge of the Credit will be entirely transparent to the Contract owner, except that the Credit will at that time be fully vested, and on-going charges against the assets of the variable account will be reduced by an annualized rate of 0.45% of the daily net assets of the variable account.

During the first seven years of the Contract, the Credit will be fully vested except during the contractual free look period and when certain surrenders of Contract value are made. If the free look privilege is exercised, Nationwide will recapture the Credit. Earnings on the Credit, however, will be retained by the Contract owner.

After the free look period and before the end of the seventh Contract year, certain withdrawals from Contract value will subject the Credit to recapture. During the first seven Contract years only, if an amount withdrawn is subject to a CDSC, then a portion of the Credit may be recaptured. No recapture will take place after the seventh Contract year. The Credit will not be subject to recapture if a free withdrawal (not subject to the CDSC) is being made. For purposes of calculating the CDSC surrenders are considered to first come from the oldest purchase payment made to the Contract, then the next oldest purchase payment and so forth. Earnings to the Contract are not subject to CDSC. Thus, if the Contract owner withdraws 13% of purchase payments made within the first Contract year, 3% of the Credit will be recaptured by Nationwide, since the Contract owner may withdraw 10% of purchase payments without a CDSC. This means that the percentage of the Credit to be recaptured will be determined by the percentage of total purchase payments reflected in the amount surrendered that is subject to CDSC. The recaptured amount will be taken proportionately from each investment option as allocated at the time of the withdrawal. No recapture of the Credit will take place if the Contract is annunitized (annuitization is not permitted during the first two Contract years), if a death benefit becomes payable, if distributions are required in order to meet minimum distributions requirements under the Code, if free withdrawals are being taken pursuant to an aged-based systematic withdrawal program, or in connections with any other type of withdrawal not otherwise subject to a CDSC. As indicated previously, after the end of the seventh Contract year, the Credit will be fully vested without limitation and the 0.45% charge associated with the Credit will be eliminated.

Applicants seek exemption pursuant to Section 6(c) from Sections 2(a)(32), 22(c) and 27(i)(2)(A) of the 1940 Act and Rule 22c–1 thereunder to the extent necessary to permit Nationwide to issue contracts from the Separate Accounts and any Future Separate Accounts that provide for (i) the recapture of the Credit when the Contract owner returns the Contract during the free-look period; and (ii) the recapture of a portion of the Credit (as described above) when the Contract owner withdraws any amounts subject to CDSC during the first seven years from the date the Contract is issued.

Applicants' Legal Analysis

1. Section 6(c) of the 1940 Act authorizes the Commission to exempt any person, security or transaction, or any class or classes of persons, securities or transactions from the provisions of the Act and the rules promulgated thereunder if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants request that the Commission, pursuant to Section 6(c) of the 1940 Act, grant the exemptions outlined above with respect to the Contracts and any Future Contracts underwritten or distributed by NAS, FIISC, or any other NASD member broker-dealer controlling or controlled by, or under common control with, Nationwide. Applicants represent that any such Future Contracts funded by the Separate Accounts or Future Separate Accounts will be substantially similar in all material respects to the Contracts described herein. Applicants believe that the requested exemptions are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

2. Applicants represent that the 0.45% charge associated with the rider option providing the Credit is consistent with the requirements of Section 26(e)(A)(2) of the 1940 Act. Section 26(e)(A)(2) provides that it is unlawful for registered separate accounts or sponsoring insurance companies to sell any variable insurance contract ''unless the fees and charges deducted under the contract, in the aggregate, are reasonable in relation to the services rendered, the expenses expected to be incurred, and the risks assumed by the insurance company.'' Because the Credit associated with the rider option will be funded from the Nationwide general account, the Credit creates an expense for Nationwide. In addition, the risk of not recovering that expense is substantial in light of the fact that under several different contingencies, the Credit will be fully or partially vested long before the charge for the Credit is discontinued at the end of the seventh Contract year. Accordingly, Applicants represent that the 0.45% charge associated with the rider, in addition to the basic mortality and expense risk charge of 0.95%, is reasonable and therefore consistent with the

requirements of section 26(e)(2)(A) of the 1940 Act. A similar representation will be made in the registration statements for the Contracts, as required under section 26(e)(2)(A). Applicants also submit that the risk of not recovering the expense associated with the rider option is substantially diminished if the Contract value, including the Credit, is not surrendered or otherwise distributed prior to the end of the seventh Contract year. Thus, the elimination of the 0.45% rider option charge is entirely warranted and will benefit Contract owners.

3. Applicants represent that it is not administratively feasible to track the Credit amount in the Separate Accounts after the Credit is applied. Accordingly, the asset-based charges applicable (when the rider option providing the Credit is elected) to the Separate Account will be assessed against the entire amounts held in the Separate Accounts, even during those periods when the Credit is not completely vested. Accordingly, the aggregate asset based charges assessed against a Contract owner's Separate Account value will be higher than those that would have been charged if the Contract owner's Separate Account value did not include the Credit and the Contract provided for no rider option charge of 0.45%.

4. Subsection (i) of Section 27 provides that Section 27 does not apply to any registered separate account funding variable insurance contracts, or to the sponsoring insurance company and principal underwriter of such account, except as provided in paragraph (2) of the subsection. Paragraph (2) provides that it shall be unlawful for any registered separate account funding variable insurance contracts or a sponsoring insurance company of such account to sell a contract funded by the registered separate account unless, among other things, such contract is a redeemable security. Section 2(a)(32) defines ''redeemable security'' as any security, other than short-term paper, under the terms of which the holder, upon presentation to the issuer, is entitled to receive approximately his or her proportionate share of the issuer's current net assets, or the cash equivalent thereof.

5. Applicants submit that recapturing the Credit will not deprive an owner of his or her proportionate share of the Separate Accounts' current net assets. Applicants state that an owner's interest in the amount of the Credit allocated to his or her annuity account value is subject to the vesting provisions of the Contracts. Until or unless the Credit is vested, Nationwide retains a right and interest in the Credit, although not in any earnings attributable to the Credit. Contractual provisions allowing Nationwide to recapture the Credit (a) upon the exercise of free look privileges, and (b) during the first seven contract years for any amount distributed subject to CDSC, merely allow Nationwide to recover its own assets. Applicants assert that since amounts subject to recapture are not vested, the Contract owner is not deprived of his or her proportionate share of Separate Account assets.

6. In addition, with respect to Credit recapture upon the exercise of the free-look privilege, Applicants state that it would be unfair to allow a Contract owner to retain the amount credited. Applicants state that if Nationwide could not recapture the Credit upon return of the Contract, individuals could purchase a Contract with the intention of retaining the credited amount for an unjustified profit at the expense of Nationwide.

7. Applicants assert that the Credit will be attractive to and in the interest of investors because it will permit owners to have 103% of contributions made during the first twelve months invested in selected investment options from the date the contribution is received. Also, any earnings attributable to the Credit will be retained by the Contract owner in addition to the principal amount of the Credit, provided the contingencies described herein are satisfied. Further, Applicants believe that the optional Credit rider will be particularly attractive to and in the interest of long-term investors due to the elimination of the charge associated with the Credit rider after the seventh Contract year. Applicants assert that the elimination of the charge associated with the Credit will allow prospective purchasers to assess the value of the optional Credit rider, and elect or decline it, based on their particular circumstances, preferences and expectations.

8. Applicants submit that the provisions for recapture of the Credit under the Contracts do not violate Section 2(a)(32) and 27(i)(2)(A) of the 1940 Act. Nevertheless, to avoid any possible uncertainties, Applicants request an exemption from those Sections, to the extent deemed necessary, to permit the recapture of any Credit under the circumstances described herein with respect to the Contracts and any Future Contracts issued in conjunction with the Separate Accounts or any Future Separate Accounts without loss of the relief provided by Section 27(i).

9. Section 22(c) of the 1940 Act authorizes the Commission to make rules and regulations applicable to registered investment companies and to principal underwriters of, and dealers in, the redeemable securities of any registered investment company, whether or not members of any securities association, to the same extent, covering the same subject matter, and for the accomplishment of the same ends as are prescribed in Section 22(a) in respect of the rules which may be made by a registered securities association governing its members. Rule 22c–1 thereunder prohibits a registered investment company issuing any redeemable security, a person designated in such issuer's prospectus as authorized to consummate transactions in any such security, and a principal underwriter of, or dealer in, such security, from selling, redeeming, or repurchasing any such security except at a price based on the current net asset value of such security which is next computed after receipt of a tender of such security for redemption or of an order to purchase or sell such security.

10. It could be argued that Nationwide's recapture of the Credit constitutes a redemption of securities for a price other than the current net asset value of the Separate Accounts. Applicants contend, however, that recapture of the Credits does not violate Section 22(c) and Rule 22c–1. Applicants argue that such recapture does not involve either of the evils or harmful events that Rule 22c–1 was intended to eliminate or reduce, namely: (1) The dilution of the value of outstanding redeemable securities of registered investment companies through their sale at a price below net asset value or their redemption or repurchase at a price above it; and (2) other unfair results including speculative trading practices. To recapture any Credit, Nationwide will redeem Contract owners' interests in the Separate Accounts at a price determined on the basis of current net asset value of the respective Separate Accounts.

Nationwide will only recapture amounts credited when withdrawals are taken subject to a CDSC and when the contractual Free Look right is exercised. The percentage of the Credit recaptured will be determined by the ratio of the amount withdrawn (subject to a CDSC and the contractual Free Look) to the sum of all purchase payments. If, for example, the amount withdrawn (subject to CDSC) equals 50% of purchase payments, 50% of the Credit will be recaptured. Nationwide will not recapture Credits for amounts

withdrawn under the Contract due to the following: withdrawals taken in order to meet minimum distribution requirements under the Code; annuitization; payment of a death benefit; free-withdrawals taken as allowed under the contract; or any other type of withdrawal not subject to a CDSC. In no event will the amount recaptured equal more than the amount of the Credit that Nationwide paid out of its general account. Although Contract owners will be entitled to retain any investment gain attributable to the Credit the amount of such gain will be determined on the basis of the current net asset value of the respective Separate Account.

Thus, no dilution will occur upon the recapture of the Credit. Applicants also submit that the second harm that Rule 22c–1 was designed to address, namely, speculative trading practices calculated to take advantage of backward pricing, will not occur as a result of the recapture of the Credit. To avoid any uncertainty as to full compliance with the 1940 Act, Applicants request an exemption from the provisions of Section 22(c) and Rule 22c–1 to the extent deemed necessary to permit them to recapture the Credit under the Contracts and any Future Contracts (that are substantially similar in all material respects to the Contracts described herein) issued in conjunction with the Separate Accounts or any Future Separate Accounts.

Section 6(c) of the Act provides: The Commission, by rules and regulations upon its own motion, or by Order upon application, may conditionally or unconditionally exempt any person, security, or transactions, or any class or classes of persons, securities, or transactions, from any provision or provisions of this title or of any rule or regulation thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of this title.

Applicants assert that their request for an Order is appropriate in the public interest. Applicants state that such an Order would promote competitiveness in the variable annuity market by eliminating the need to file redundant exemptive applications, thereby reducing administrative expenses and maximizing the efficient use of Applicants' resources. Applicants argue that investors would not receive any benefit or additional protection by requiring Applicants to repeatedly seek exemptive relief that would present no issue under the 1940 Act that has not already been addressed in their amended Application described herein. Applicants assert that having them file additional applications would impair their ability to effectively take advantage of business opportunities as they arise. Further Applicants state that if they were required repeatedly to seek exemptive relief with respect to the same issues addressed in the amended Application described herein, investors would not receive any benefit or additional protection thereby.

Conclusion

Applicants assert, based on the grounds summarized above, that their exemptive request meets the standards set out in Section 6(c) of the 1940 Act, namely, that the exemptions requested are necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–34015 Filed 12–30–99 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42272; File No. SR–Phlx–99–42]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Approving Proposed Rule Change on an Accelerated Basis Relating to Exchange Rule 98, Emergency Committee

December 23, 1999.

On October 13, 1999 the Philadelphia Stock Exchange. (''PHLX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change relating to Exchange Rule 98, Emergency Committee. The proposed rule change was published for comment in the **Federal Register** on November 29, 1999.[3] The Commission received no comments on the proposal. On December 22, 1999 the Exchange submitted to the Commission Amendment No. 2 to the proposed rule change, requesting that the proposed rule be approved for a 120 day pilot to expire on April 21, 2000.[4] This order approves the proposal, as amended, on an accelerated basis.

II. Description of the Proposal

The Exchange proposes to amend Exchange Rule 98, *Emergency Committee* (''Emergency Committee'') to update certain of its provisions. First, the composition of the Emergency Committee is to be updated to correspond with previous revisions to the Exchange's governance structure. In 1997, various amendments to the Exchange's Certificate of Incorporation and By-Laws dealing with the governance structure of the Exchange were approved by the Commission.[5] Among other things, a provision was added authorizing the Board of Governors to appoint a Chairman of the Board who would be the full-time, paid Chief Executive Officer of the Exchange, and the President position was eliminated.[6] The proposed rule change, therefore, would replace the ''Chairman of the Exchange'' with the current ''Chairman of the Board'' designation; delete the word ''President'' from the rule as the Exchange no longer has a ''President''; and include the Exchange's On-Floor Vice Chairman [7] as a member of the Emergency Committee.[8]

Second, the proposed rule change deletes a provision authorizing the Emergency Committee to take action regarding CENTRAMART, an equity order entry system which is no longer used on the Exchange's equity trading floor.

Finally, the Exchange is proposing to clarify that the Emergency Committee is authorized to take action if any emergency condition is created by the Year 2000 date change.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 34–42156 (November 19, 1999), 64 FR 66684.

[4] *See* letter from Richard S. Rudolph, Counsel, Exchange, to Rebekah Liu, Special Counsel, Division of Market Regulation (''Division''), Commission, dated December 22, 1999. Because Amendment No. 2 only requests that the proposed rule be approved for a 120-day pilot, the Amendment is non-substantive in nature. Therefore, the Commission will not solicit comments on Amendment No. 2.

[5] *See* Securities Exchange Act Release No. 38960 (August 22, 1997), 62 FR 45904 (August 29, 1997).

[6] *Id.* Other corresponding amendments to the By-Laws were made in connection with the 1997 changes to the Exchange's governance structure. For example, references to ''President'' were changed to ''Chief Executive Officer'' or ''Chairman of the Board.'' *See* PHLX By-law Article IV, Section 4–1 and PHLX By-Law Article V, Section 5–1.

[7] *See* PHLX By-Law, Article IV, Section 4–2.

[8] Thus, under the proposed rule, the Emergency Committee would include five individuals: the Chairman of the Board of Governors; the On-Floor Vice Chairman of the Board of Governors; and the Chairmen of the Floor Procedure Committee, the Options Committee, and the Foreign Currency Options Committee .

III. Discussion

The Commission finds that the proposed rule change is consistent with Section 6 of the Act[9] and the rules and regulations thereunder applicable to a national securities exchange. In particular, the Commission finds the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act[10] which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.[11]

The proposed rule change is consistent with the requirements of the Act because by conforming the composition of the Emergency Committee to structural amendments that were made to the Exchange's governance structure, the proposed rule will help to ensure that the Emergency Committee can operate in times of emergency, which will foster investor and public interest, and promote just and equitable principles of trade.

The proposed rule is making one new change to the structure of the Emergency Committee by replacing the President, which the Exchange no longer has, with the On-Floor Vice Chairman. While this means that the Emergency Committee will have, at a minimum, two On-Floor representatives—the On-Floor Vice Chairman and the Chairman of the Floor Procedure Committee—the Commission believes that the Exchange has justified the change.[12] The Exchange notes that addition of the On-Floor Vice Chairman will preserve the five-member structure of the Emergency Committee, minimizing the possibility of a tie vote on the Emergency Committee, and provides the Emergency Committee with the most qualified replacement for the President; that is, a member that can contribute direct knowledge of any potential or existing emergencies existing on the trading floor.[13] In addition, while the Commission would be concerned about any committee structure that is dominated by one Exchange interest, the Commission believes that the Chairman of the Board, as well as the other remaining members of the Emergency Committee, which may or may not be from the floor, should help to controvert any such concerns. The Commission is granting accelerated approval to this proposed rule change for a 120-day pilot basis to allow the Exchange to further consider whether the overall Emergency Committee structure ensures that all Exchange interests are fairly represented.[14]

By clarifying that the Emergency Committee has the authority to take action if ''extraordinary market conditions or other emergencies'' arise due to the Year 2000 date change, the proposed rule also removes possible impediments to the Exchange's market that may arise due to the Year 2000 date change, thereby perfecting the mechanism of a free and open market and a national market system. As noted by the Exchange, the proposed Rule was submitted as part of the Year 2000 contingency plan designed by the Exchange's Year 2000 Task Force. The Commission notes that the current rule gives the Emergency Committee the power to act in any ''emergency condition,'' which in the Commission's opinion, would include one created by the Year 2000 date change.[15] While the Exchange desired to clarify this, the Commission notes that the Rule proposal does not go beyond true emergency situations. Accordingly, not every problem that arises from the Year 2000 date change would necessarily rise to the level of an emergency warranting action by the Emergency Committee.

Finally, by deleting references to CENTRAMART, the proposed rule makes clear that this equity order system is no longer in use at the Exchange. Taken together, then, the provisions of the proposed rule change should protect investors and the public interest.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register.** Accelerated approval of the proposed rule change should help the Emergency Committee to be ready to take action on issues related to the Year 2000 date change prior to January 1, 2000. The Commission notes that the Exchange's proposal was published in the **Federal Register** for the full statutory period and no comments were received. Therefore, the Commission believes it is consistent with Section 6(b)(5) and Section 19(b)(2) of the Act to grant accelerated approval to the proposed rule change.[16]

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[17] that the proposed rule change (SR–PHLX–99–42), as amended, is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

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[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[12] The Commission notes that previously, the President could have been a floor member.

[13] Letter from Richard S. Rudolph, Counsel, Exchange, to Rebekah Liu, Special Counsel, Division, Commission, dated November 16, 1999.

[14] The Commission requests that the Exchange report back to the Commission 45 days prior to the expiration of the 120-day pilot on its views as to whether the Emergency Committee structure ensures that all Exchange interests, including On-Floor and Off-Floor, are fairly represented on the committee.

[15] Previously, the Exchange described ''extraordinary market or emergency conditions'' as, among other things, a declaration of war, a presidential assassination, an electrical blackout, or events such as the 1987 market break or other highly volatile trading conditions that require intervention for the market's continued efficient operation. Letter from William W. Uchimoto, General Counsel, Exchange, to Sharon L. Itkin, Division, Commission, dated March 15, 1989.

[16] 15 U.S.C. 78f(b)(5) and 78s(b)(2).

[17] 15 U.S.C. 78s(b)(2).

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 42271; File No. SR–PHLX–99–45]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to a Pilot Program to Impose Fees For Computer Equipment Services, Repairs or Replacements and Relocation of Computer Equipment

December 23, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 29, 1999, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. On December 16, 1999, the Exchange

[1] 15 USC 78s(b)(1).

[2] 17 CFR 240.19b–4.

submitted Amendment No. 1 [3] to the proposed rule change.[4]

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its schedule of dues, fees, and charges to require all members on the options and equity floors to pay a new fee for computer equipment services, repairs or replacements and a fee for member-requested relocation of computer equipment.[5] These fees will be imposed on a three-month pilot basis beginning on January 1, 2000 and ending on March 31, 2000.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

1. Purpose

The proposed rule change amends the Phlx's fee schedule in two ways. First, the Exchange would amend its schedule of dues, fees and charges to impose a new fee on all members on the options and equity floors for computer equipment services, repairs or replacements on the trading floors. Specifically, the Exchange proposes to charge $100 for every service call plus $75 an hour, with a minimum of two hours charged.[6] However, members will not be billed for computer equipment services, repairs or replacements when new or refurbished equipment fails in the normal and customary manner of usage within 30 days of installation.

The Exchange represents that these charges will cover the cost of servicing, repairing or replacing computer equipment on the options and equity floors.[7] The Exchange receives 90 percent of calls on a routine basis to repair, replace or otherwise service keyboards, track balls, printers and other computer equipment from options or equity floor members' work stations. The Exchange represents that this new fee is intended to help cover the costs associated with the maintenance and replacement of computer equipment, as well as to encourage care in using the computer equipment.

Second, the Exchange would amend its schedule of dues, fees, and charges to also impose another new fee for member-requested relocation of a member's work station or any piece of their computer equipment on the options or equity floor. In this case, the Exchange proposes to charge a $100 service fee plus $75 per hour per person moving the equipment, with a minimum of two hours charged for each relocation request.[8] The Exchange represents that the proposed fees are similar to provisions adopted by the Pacific Exchange, Inc. (''PCX'') and the Chicago Board Options Exchange (''CBOE'').[9]

The Exchange represents that the post/equipment relocation fee will assist in defraying the costs associated with the moving of computer equipment. The Exchange states that on the options and equity floors, the relocations can be very time-consuming and costly since nearly all relocations take place after hours or on the weekends.

The Exchange intends to prepare pre-printed forms that floor members can complete prior to requesting repair or relocation service. A Notice to Members describing the equipment repair and relocation request procedures will be sent to all floor members prior to implementation.[10]

The Exchange proposes to impose these new fees, to be billed monthly, effective January 1, 2000 through March 31, 2000, to give the Exchange the ability to monitor, and re-evaluate if necessary, the procedures. These procedures include instructions to members as to where the service request forms will be located, directions as to how to complete the form and which department is required to forward the forms to the accounting department. The procedures will also include a provision that states that members will not be billed for computer equipment services, repairs or replacements when new or refurbished equipment fails in the normal and customary manner of usage within 30 days of installation. In addition, the three-month pilot program will give the Exchange the opportunity to determine whether the fees for computer equipment services, repairs or replacements and member-requested relocation of computer equipment that are charged to member are appropriate and reflect the costs for these services that are incurred by the Exchange.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act [11] in general, and furthers the objectives of Section 6(b)(4),[12] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change establishes or changes a due, fee or charge imposed by the Exchange and, therefore, has become effective upon filing pursuant to Rule 19(b)(3)(A) of the Act [13] and Rule

[3] In Amendment No. 1, the Exchange provided, among other things, the dates during which the pilot program will be in effect, clarified why the fees are being imposed, to whom they apply, and represented that it will circulate a Notice to Members announcing the pilot program. *See* Letter from Cynthia K. Hoeskstra, Counsel, Phlx, to Jennifer Colihan, Attorney, Division of Market Regulation (''Division''), SEC, dated December 16, 1999 (''Amendment No. 1'').

[4] Because of the substantive nature of Amendment No. 1, the Commission deems the proposal to be filed and effective as of December 16, 1999, the date on which Amendment No. 1 was filed.

[5] A fee will not be charged for new installation of computer equipment.

[6] Some component of this amount may reflect Pennsylvania sales tax.

[7] This proposed fee will apply to all such requests with no distinction between intentional abuse or normal wear and tear due to the difficulties associated with categorizing the types of repairs.

[8] For example, if two individuals take two hours to relocate a work station, the member will be charged $100 for the service call, plus $300 for moving the equipment ($75 × four (two people × two hours)). Again, some component of this amount may reflect Pennsylvania sales tax.

[9] *See* Securities and Exchange Act Release Nos. 41567 (June 28, 1999), 64 FR 36417 (July 6, 1999) (SR–PCX–99–19) and 29482 (July 24, 1999), 56 FR 36180 (July 31, 1999) (SR–CBOE–91–27).

[10] This paragraph was clarified pursuant to a telephone conversation between Cynthia Hoekstra, Counsel, Phlx, and Jennifer Colihan, Attorney, SEC on December 21, 1999.

[11] 15 USC 78f(b).

[12] 15 USC 78f(b)(4).

[13] 15 USC 78s(b)(3)(A).

19b-4(f)(2) [14] thereunder.[15] At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–99–45 and should be submitted by January 24, 2000.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[16]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–34017 Filed 12–30–99; 8:45 am]

BILLING CODE 8010–01–M

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Request and Comment Request

In compliance with Public Law 104–13, the Paperwork Reduction Act of 1995, SSA is providing notice of its information collections that require submission to the Office of Management and Budget (OMB). SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology.

I. The information collections listed below will be submitted to OMB within 60 days from the date of this notice. Therefore, comments and recommendations regarding the information collections would be most useful if received by the Agency within 60 days from the date of this publication. Comments should be directed to the SSA Reports Clearance Officer at the address listed at the end of this publication. You can obtain a copy of the collection instruments by calling the SSA Reports Clearance Officer on (410) 965–4145, or by writing to him at the address listed at the end of this publication.

1. Report to United States Social Security Administration by Person Receiving Benefits for a Child or Adult Unable to Handle Funds—0960–0049. The information on Forms SSA–7161–OCR–SM and 7162–OCR–SM is used by the Social Security Administration (SSA) to determine continuing entitlement and proper benefit amounts for Social Security beneficiaries who live outside the United States (U.S.). The respondents are persons living outside the U.S. who are entitled to benefits or who are representative payees for an entitled beneficiary.

	SSA–7161–OCR–SM	SSA–7162–OCR–SM
Number of Respondents:	30,000	200,000
Frequency of Response:	1	1
Average Burden Per Response (minutes):	15	5
Estimated Annual Burden (hours):	7,500	16,667

2. State Agency Schedule for Equipment Purchases for SSA Disability Programs—0960–0406. SSA uses the information collected on Form SSA–871 to budget and account for expenditures of funds for equipment purchases by the State Disability Determination Services (DDS) that administer the disability determination program. The respondents are State governments that make disability determinations.

Number of Respondents: 54.

Frequency of Response: 4.

Average Burden Per Response: 60 minutes.

Estimated Annual Burden: 216 hours.

3. Physical Residual Functional Capacity Assessment; Mental Residual Functional Capacity Assessment—0960–0431. The information collected on forms SSA–4734–BK and SSA–4734–BK–SUP is needed by SSA to assist in the adjudication of disability claims involving physical and/or mental impairments. The forms assist the State DDS to evaluate impairment(s) by providing a standardized data collection format to present findings in a clear, concise and consistent manner. The respondents are State DDSs administering title II and title XVI disability programs.

Number of Responses: 1,130,772.

Frequency of Response: 1.

Average Burden Per Response: 20 minutes.

Estimated Annual Burden: 376,924 hours.

4. Letter to Employer Requesting Wage Information—0960–0138. The information collected on form SSA—L4201 is used by SSA to determine eligibility and proper benefit payments for SSI applicants/recipients. The respondents are employers of applicants for and recipients of SSI payments.

Number of Respondents: 133,000.

Frequency of Response: 1.

Average Burden Per Response: 30 minutes.

Estimated Annual Burden: 66,500 hours.

5. Privacy and Disclosure of Official Records and Information: Availability of Information and Records to the Public—20 CFR 401 and 402—0960–0566. The respondents are individuals requesting access to their SSA records, correction of their SSA records and disclosure of SSA records. This information is required to:

(a) Identify individuals who request access to their records:

[14] 17 CFR 240.19b-4(f)(2).

[15] In reviewing this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 USC 78c(f).

[16] 17 CFR 200.30–3(a)(12).

Number of Respondents: 10,000.
Frequency of Response: On Occasion.
Average Burden Per Response: 11 minutes.
Estimated Annual Burden: 1,833.
(b) Designate an individual to receive and review a recordholder's sensitive medical records in accordance with 20 CFR 401.55 and for disclosure of such records to the recordholder by his/her designee:
Number of Respondents: 3,000.
Frequency of Response: On Occasion.
Average Burden Per Response: 2 hrs.
Estimated Annual Burden: 6,000 hrs.
(c) Correct or amend records:
Number of Respondents: 100.
Frequency of Response: On Occasion.
Average Burden Per Response: 10 minutes.
Estimated Annual Burden: 17 hrs.
(d) Obtain consent from an individual to release his/her records to others. Consents are submitted by letter in writing or by use of an SSA–3288:
Number of Respondents: 200,000.
Frequency of Response: On Occasion.
Average Burden Per Response: 3 minutes.
Estimated Annual Burden: 10,000 hrs.
(e) Facilitate the release of information under the Freedom of Information Act (FOIA):
Number of Respondents: 15,000.
Frequency of Response: On Occasion.
Average Burden Per Response: 5 minutes.
Estimated Annual Burden: 1,250.
(f) Grant Waiver or reduction of fees for records requested under FOIA:
Number of Respondents: 400.
Frequency of Response: On Occasion.
Average Burden Per Response: 5 minutes.
Estimated Annual Burden: 33 hrs.

II. The information collections listed below have been submitted to OMB for clearance. Written comments and recommendations on the information collections would be most useful if received within 30 days from the date of this publication. Comments should be directed to the SSA Reports Clearance Officer and the OMB Desk Officer at the addresses listed at the end of this publication. You can obtain a copy of the OMB clearance packages by calling the SSA Reports Clearance Officer on (410) 965–4145, or by writing to him.

1. Partnership Questionnaire—0960–0025. Form SSA–7104 is used to establish several aspects of eligibility for benefits, including accuracy of reported partnership earnings, the veracity of a retirement, and lag earnings where they are needed for insured status. The respondents are applicants for OASDI and disability benefits.
Number of Respondents: 12,350.
Frequency of Response: 1.
Average Burden Per Response: 30 minutes.
Estimated Annual Burden: 6,175 hours.

2. Report of New Information in Disability Cases—0960–0071. The information collected on Form SSA–612 is used to update the disability records of respondents, based on changes reported. The respondents are applicants for and recipients of title II disability benefits.
Number of Respondents: 27,000.
Frequency of Response: 1.
Average Burden Per Response: 6 minutes.
Estimated Annual Burden: 2,700 hours.

3. Claimant's Recent Medical Treatment—0960–0292. The information collected on Form HA–4631 is used to provide an updated medical history for a disability claimant who requests a hearing and to afford claimants their statutory right to a hearing and decision under the Social Security Act. The respondents are claimants requesting hearings on entitlement to benefits based on disability under title II (Old-Age, Survivors and Disability Insurance) and/or title XVI (Supplemental Security Income) of the Social Security Act.
Number of Respondents: 309,490.
Frequency of Response: 1.
Average Burden Per Response: 10 minutes.
Estimated Annual Burden: 51,582 hours.

4. Supplemental Security Income (SSI)—Quality Review Case Analysis—0960–0133. Form SSA–8508–BK is used with a sample of SSI recipients in a personal interview and covers all elements of SSI eligibility. The information obtained is used to assess the effectiveness of SSI policies and procedures and to establish payment accuracy rates. The respondents are SSI Recipients.
Number of Respondents: 15,000.
Frequency of Response: 1.
Average Burden Per Response: 60 minutes.
Estimated Annual Burden: 15,000 hours.

5. Psychiatric Review Technique—0960–0413. The information collected on Form SSA–2506 is needed by SSA to facilitate the adjudication of claims involving mental impairments. The information is used to identify the need for additional evidence for the determination of impairment severity; to consider aspects of mental impairment relevant to the individual's ability to work; and to organize and present the findings in a clear, concise manner. The respondents are State DDS's administering titles II and XVI disability programs.
Number of Respondents: 1,005,804.
Frequency of Response: 1.
Average Burden Per Response: 15 minutes.
Estimated Annual Burden: 251,451 hours.

6. Instructions for Completion of Federal Assistance Application Form SSA–96 for SSA Research and Demonstration Grant Programs—0960–0184. The information collected on form SSA–96 is needed by SSA to evaluate and select grant proposals for funding. The respondents are applicants for Federal assistance, including State and local governments, educational institutions and other nonprofit and for-profit organizations.
Number of Respondents: 150.
Frequency of Response: 1.
Average Burden Per Response: 14 hours.
Estimated Annual Burden: 2,100 hours.

7. Work Activity Report—Employee. 0960–0059. The information on form SSA–821–BK will be used by the Social Security Administration (SSA) to obtain work issue information from beneficiaries in face-to-face interviews, telephone interviews, or by mail during the initial claims process, during the continuing disability review process, and whenever a work issue arises in SSI claims. The purpose of the SSA–821–BK is to collect information concerning whether beneficiaries have worked in employment after becoming disabled and, if so, whether that work is substantial gainful activity. The information will be used to determine if the recipient continues to meet the disability requirements of the law.
Number of Respondents: 300,000.
Frequency of Response: 1.
Average Burden Per Response: 45 minutes.
Estimated Annual Burden: 225,000 hours.

SSA Address: Social Security Administration, DCFAM, Attn: Frederick W. Brickenkamp, 6401 Security Blvd., 1–A–21 Operations Bldg., Baltimore, MD 21235.
OMB Address: Office of Management and Budget, OIRA, Attn: Desk Officer for SSA, New Executive Office Building, Room 10230, 725 17th St., NW, Washington, DC 20503.

Dated: December 22, 1999.

Nicholas E. Tagliareni,
Director, Center for Publications Management, Social Security Administration.

[FR Doc. 99–34004 Filed 12–30–99; 8:45 am]
BILLING CODE 4191–02–U

DEPARTMENT OF STATE

[Public Notice 3192]

Determination Under Section 2(b)(1)(B) of the Export-Import Bank Act of 1945, as Amended

Pursuant to Section 2(b)(1)(B) of the Export-Import Bank Act of 1945, as amended, and Executive Order 12166 of October 19, 1979, I determine that it is in the national interest and would clearly and importantly advance United States policy in Russia for the Export-Import Bank of the United States (the ''Bank'') to not approve, for the time being, the financing of exports of goods or services in cases AP070202XX and AP067280XX.

This determination shall be published in the **Federal Register**.

Madeleine K. Albright,

Secretary of State, Department of State.

[FR Doc. 99–34062 Filed 12–30–99; 8:45 am]

BILLING CODE 4710–23–P

TENNESSEE VALLEY AUTHORITY

Paperwork Reduction Act of 1995, as Amended by Public Law 104–13; Proposed Collection, Comment Request

AGENCY: Tennessee Valley Authority.

ACTION: Proposed Collection; comment request.

SUMMARY: The proposed information collection described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended). The Tennessee Valley Authority is soliciting public comments on this proposed collection as provided by 5 CFR Section 1320.8(d)(1). Requests for information, including copies of the information collection proposed and supporting documentation, should be directed to the Agency Clearance Officer: Wilma H. McCauley, Tennessee Valley Authority, 1101 Market Street (WR 4Q), Chattanooga, Tennessee 37402–2801; (423) 751–2523.

Comments should be sent to the Agency Clearance Officer no later than March 3, 2000.

SUPPLEMENTARY INFORMATION:

Type of Request: Regular submission.

Title of Information Collection: Employment Applications.

Frequency of Use: On Occasion.

Type of Affected Public: Individuals.

Small Businesses or Organizations Affected: No.

Federal Budget Functional Category Code: 999.

Estimated Number of Annual Responses: 15,320.

Estimated Total Annual Burden Hours: 15.320.

Estimated Average Burden Hours Per Response: 1.

Need For and Use of Information: Applications for employment are needed to collect information on qualifications, suitability for employment, and eligibility for veterans preference. The information is used to make comparative appraisals and to assist in selections. The affected public consists of individuals who apply for TVA employment.

William S. Moore,

Senior Manager, Administrative Services.

[FR Doc. 99–34019 Filed 12–30–99; 8:45 am]

BILLING CODE 8120–08–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aging Transport Systems Rulemaking Advisory Committee; Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of public meeting.

SUMMARY: This notice announces a public meeting of the FAA's Aging Transport Systems Rulemaking Advisory Committee.

DATES: The meeting will be held January 19–20, 2000, beginning at 9 a.m. on January 19. Arrange for oral presentations by January 12.

ADDRESSES: The meeting will be at the Bessie Coleman Conference Center, Federal Aviation Administration, 800 Independence Ave., SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Terry K. Stubblefield, Office of Rulemaking, ARM–208, FAA, 800 Independence Ave., SW, Washington, DC 20591, Telephone (202) 267–7624, FAX (202) 267–5075.

SUPPLEMENTARY INFORMATION: Notice is hereby given of a meeting of the Aging Transport Systems Rulemaking Advisory Committee in the Bessie Coleman Conference Center, Federal Aviation Administration, 800 Independence Ave., SW., Washington, DC.

The agenda will include:

- Opening remarks.
- Working group reports.
- Development of working group instructions for assessing the condition of aging mechanical systems.
- Discussion about the need to inspect newer airplanes, including development of an Aging Transport Systems Rulemaking Advisory Committee position.
- Progress report on the FAA's Office of System Safety maintenance reporting improvements.

Attendance is open to the interested public but will be limited to the space available. The public must make arrangements by January 12, 2000, to present oral statements at the meeting. The public may present written statements to the committee at any time by providing 20 copies to the Executive Director, or by bringing the copies to him at the meeting. Public statements will only be considered if time permits. In addition, sign and oral interpretation as well as a listening device can be made available if requested 10 calendar days before the meeting.

Issued in Washington, DC on December 28, 1999.

Marisa Mullen,

Acting Director, Office of Rulemaking.

[FR Doc. 99–34061 Filed 12–30–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Mid-Willamette Valley Council of Governments, Marion County, OR

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The Federal Highway Administration (FHWA) is issuing this notice of intent to advise the public that an Environmental Impact Statement (EIS) will be prepared for a proposed new bridge across the Willamette River in the City of Salem, Marion County, Oregon.

FOR FURTHER INFORMATION CONTACT: Anthony Boesen, Liaison Engineer Region 2, Federal Highway Administration, Equitable Center, 530 Center Street N.E., Suite 100, Salem, Oregon 97301, Telephone (503) 399–5749, Fax (503) 399–5838, E-mail Anthony.Boesen@fhwa.dot.gov.

SUPPLEMENTARY INFORMATION: The FHWA in cooperation with the Oregon Department of Transportation (ODOT) and the Mid-Willamette Valley Council of Governments (MWVCOG) will prepare an EIS for the location of a third bridge crossing of the Willamette River in Salem, Oregon. Alternatives under consideration will include no build, using alternative travel modes, modifications to land use, and improvements to the existing bridges.

The third bridge will alleviate long-term (year 2020+) transportation demands and congestion associated with the current Marion Street and Center Street bridges which provide access across the Willamette River between downtown Salem and West Salem. The Pine/Tryon corridor has been identified as one of many corridors in the Willamette River Crossing Capacity (WRCC) Study to alleviate congestion on both Marion Street and Center Street Bridges and at the east and west ramps for the two existing bridges. (Copies of the WRCC study, Phase 1, are available from the MWVCOG at telephone (503) 588–6177 or at their office at 105 High Street S.E., Salem, Oregon 97301–3667).

Information 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 expressed interest or are known to have an interest in this proposed project. A local formal scoping meeting is scheduled on January 20, 2000, at 8:30 a.m. to 5:00 p.m., at the ODOT Region 2 Headquarters, 455 Airport Road S.E., Building B, Room 116, Salem, Oregon.

Public informational meetings will be held by ODOT and MWVCOG during project development and a public hearing will be scheduled. The draft EIS will be available for public and agency review and comments prior to the public hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified; comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

Issued: December 21, 1999.

Elton H. Chang,

Environmental Engineer, Oregon Division.

[FR Doc. 99–34042 Filed 12–30–99; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Office of Motor Carrier Safety

[OMCS Docket No. 99–6156 (formerly FHWA Docket No. 99–6156)]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Office of Motor Carrier Safety (OMCS), DOT.

ACTION: Notice of final disposition.

SUMMARY: The OMCS announces its decision to exempt 40 individuals from the vision requirement in 49 CFR 391.41(b)(10).

DATES: January 3, 2000.

FOR FURTHER INFORMATION CONTACT: For information about the vision exemptions in this notice, Ms. Sandra Zywokarte, Office of Motor Carrier Research and Standards, (202) 366–2987; for information about legal issues related to this notice, Ms. Judith Rutledge, Office of the Chief Counsel, (202) 366–0834, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

Internet users may access all comments received by the U.S. DOT Dockets, Room PL–401, by using the universal resource locator (URL): *http://dms.dot.gov.* It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

An electronic copy of this document may be downloaded using a modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Office of the Federal Register's home page at: *http://www.nara.gov/fedreg* and the Government Printing Office's web page at: *http://www.access.gpo.gov/nara.*

Background

The Secretary has rescinded the authority previously delegated to the Federal Highway Administration to perform motor carrier functions and operations. This authority has been redelegated to the Director, Office of Motor Carrier Safety (OMCS), a new office within the Department of Transportation [64 FR 56270, October 19, 1999]. This explains the docket transfer. The new OMCS assumes the motor carrier functions previously performed by the FHWA's Office of Motor Carrier and Highway Safety (OMCHS). Ongoing rulemaking, enforcement, and other activities of the OMCHS, initiated while part of the FHWA, will be continued by the OMCS. The redelegation will cause no changes in the motor carrier functions and operations of the offices or resource centers.

Forty individuals petitioned the FHWA for an exemption of the vision requirement in 49 CFR 391.41(b)(10), which applies to drivers of commercial motor vehicles (CMVs) in interstate commerce. The OMCS is now responsible for processing the vision exemption applications of the 40 drivers. They are Herman Bailey, Jr., Mark A. Baisden, Brad T. Braegger, Kenneth Eugene Bross, Erick H. Cotton, Fletcher E. Creel, Richard James Cummings, Daniel R. Franks, William L. Frigic, Curtis Nelson Fulbright, Victor Bradley Hawks, Vincent I. Johnson, Myles E. Lane, Sr., Dennis J. Lessard, Jon G. Lima, Richard L. Loeffelholz, Herman Carl Mash, Joseph M. Porter, Richard Rankin, Robert G. Rasicot, A.W. Schollett, Melvin B. Shumaker, Clark H. Sullivan, Wayland O. Timberlake, Norman R.Wilson, Larry M. Wink, Jeffrey G. Wuensch, Jon H. Wurtele, Walter M. Yohn, Jr., Steven H. Heidorn, James Donald Simon, William A. Bixler, Woodrow E. Bohley, George L. Silvia, Martin Postma, Steven L. Valley, Phillip P. Smith, Robert W. Nicks, Frank T. Miller, and Roger Allen Dennison. Under 49 U.S.C. 31315 and 31136(e), the OMCS may grant an exemption for a renewable 2-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.'' Accordingly, the OMCS evaluated the petitions on their merits and made a preliminary determination that the waivers should be granted. On July 26, 1999, the agency published notice of its preliminary determination and requested comments from the public (64 FR 54948). The comment period closed on November 8, 1999. Two comments were received, and their contents were carefully considered by the OMCS in reaching the final decision to grant the petitions.

Vision and Driving Experience of the Applicants

The vision requirement in 49 CFR 391.41(b)(10) provides:

> A person is physically qualified to drive a commercial motor vehicle if that person has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of at least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70° in the horizontal meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing standard red, green, and amber.

Since 1992, the FHWA has undertaken studies to determine if this vision standard should be amended. The final report from our medical panel recommends changing the field of vision standard from 70° to 120°, while

leaving the visual acuity standard unchanged. (See Frank C. Berson, Mark C. Kuperwaser, Lloyd Paul Aiello, and James W. Rosenberg, ''Visual Requirements and Commercial Drivers,'' October 16, 1998, filed in the docket). The panel's conclusion supports the OMCS'' (and previously the FHWA's) view that the present standard is reasonable and necessary as a general standard to ensure highway safety. The OMCS also recognizes that some drivers do not meet the vision standard but have adapted their driving to accommodate their vision limitation and demonstrated their ability to drive safely.

The 40 applicants fall into this category. They are unable to meet the vision standard in one eye for various reasons, including amblyopia, retinal detachment, macular defect, and loss of an eye due to trauma. In most cases, their eye conditions were not recently developed. All but 14 applicants were either born with their vision impairments or have had them since childhood. The 14 individuals who sustained their vision conditions as adults have had them for periods ranging from 3 to 40 years.

Although each applicant has one eye which does not meet the vision standard in 49 CFR 391.41(b)(10), each has at least 20/40 corrected vision in the other eye and, in a doctor's opinion, can perform all the tasks necessary to operate a CMV. The doctors' opinions are supported by the applicants' possession of a valid commercial driver's license (CDL). Before issuing a CDL, States subject drivers to knowledge and performance tests designed to evaluate their qualifications to operate the CMV. All these applicants satisfied the testing standards for their State of residence. By meeting State licensing requirements, the applicants demonstrated their ability to operate a commercial vehicle, with their limited vision, to the satisfaction of the State. The Federal interstate qualification standards, however, require more.

While possessing a valid CDL, these 40 drivers have been authorized to drive a CMV in intrastate commerce even though their vision disqualifies them from driving in interstate commerce. They have driven CMVs with their limited vision for careers ranging from 5 to 53 years. In the past 3 years, the 40 drivers had a total of four moving violations among them. Two drivers were involved in accidents in their CMVs, but none of the CMV drivers received a citation.

The qualifications, experience, and medical condition of each applicant were stated and discussed in detail in an October 8, 1999, notice (64 FR 54948). Since the docket comments did not focus on the specific merits or qualifications of any applicant, we have not repeated the individual profiles here. Our summary analysis of the applicants as a group, however, is supported by the information published at 64 FR 54948.

Basis for Exemption Determination

Under 49 U.S.C. 31315 and 31136(e), the OMCS may grant an exemption from the vision standard in 49 CFR 391.41(b)(10) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. Without the exemption, applicants will continue to be restricted to intrastate driving. With the exemption, applicants can drive in interstate commerce. Thus, our analysis focuses on whether an equal or greater level of safety is likely to be achieved by permitting these drivers to drive in interstate commerce as opposed to restricting them to driving in intrastate commerce.

To evaluate the effect of these exemptions on safety, the OMCS considered not only the medical reports about the applicants' vision but also their driving records and experience with the vision deficiency. Recent driving performance is especially important in evaluating future safety according to several research studies designed to correlate past and future driving performance. Results of these studies support the principle that the best predictor of future performance by a driver is his/her past record of accidents and traffic violations. Copies of the studies have been added to the docket.

We believe we can properly apply the principle to monocular drivers because data from the vision waiver program clearly demonstrate the driving performance of experienced monocular drivers in the program is better than that of all CMV drivers collectively. (See 61 FR 13338, 13345, March 26, 1996). That experienced monocular drivers with good driving records in the waiver program demonstrated their ability to drive safely supports a conclusion that other monocular drivers, meeting the same qualifying conditions to those required by the waiver program, are also likely to have adapted to their vision deficiency and will continue to operate safely.

The first major research correlating past and future performance was done in England by Greenwood and Yule in 1920. Subsequent studies, building on that model, concluded that accident rates for the same individual exposed to certain risks for two different time periods vary only slightly. (See Bates and Neyman, University of California Publications in Statistics, April 1952.) Other studies demonstrated theories of predicting accident proneness from accident history coupled with other factors. These factors, such as age, sex, geographic location, mileage driven and conviction history, are used every day by insurance companies and motor vehicle bureaus to predict the probability of an individual experiencing future accidents. (See Weber, Donald C., ''Accident Rate Potential: An Application of Multiple Regression Analysis of a Poisson Process,'' Journal of American Statistical Association, June 1971). A 1964 California Driver Record Study prepared by the California Department of Motor Vehicles concluded that the best overall accident predictor for both concurrent and nonconcurrent events is the number of single convictions. This study used 3 consecutive years of data, comparing the experiences of drivers in the first 2 years with their experiences in the final year.

Applying principles from these studies to the past 3-year record of the 40 applicants, we note that cumulatively the applicants have had only two accidents and four moving violations in the last 3 years. None of the violations involved a serious traffic violation as defined in 49 CFR 383.5, and neither of the accidents resulted in a citation. The applicants achieved this record of safety while driving with their vision impairment, demonstrating the likelihood that they have adapted their driving skills to accommodate their condition. As the applicants' ample driving histories with their vision deficiencies are good predictors of future performance, the OMCS concludes their ability to drive safely can be projected into the future.

We believe applicants' intrastate driving experience provides an adequate basis for predicting their ability to drive safely in interstate commerce. Intrastate driving, like interstate operations, involves substantial driving on highways on the interstate system and on other roads built to interstate standards. Moreover, driving in congested urban areas exposes the driver to more pedestrian and vehicular traffic than exist on interstate highways. Faster reaction to traffic and traffic signals is generally required because distances are more compact than on highways. These conditions tax visual capacity and driver response just as intensely as interstate driving conditions. The veteran drivers in this proceeding have operated CMVs safely under those conditions for at least 5

years, most for much longer. Their experience and driving records lead us to believe that each applicant is capable of operating in interstate commerce as safely as he or she has been performing in intrastate commerce. Consequently, the OMCS finds that exempting applicants from the vision standard in 49 CFR 391.41(b)(10) is likely to achieve a level of safety equal to that existing without the exemption. For this reason, the agency will grant the exemptions for the 2-year period allowed by 49 U.S.C. 31315 and 31136(e).

We recognize that the vision of an applicant may change and affect his/her ability to operate a commercial vehicle as safely as in the past. As a condition of the exemption, therefore, the OMCS will impose requirements on the 40 individuals consistent with the grandfathering provisions applied to drivers who participated in the agency's vision waiver program.

Those requirements are found at 49 CFR 391.64(b) and include the following: (1) That each individual be physically examined every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in its driver qualification file, or keep a copy in his/her driver qualification file if he/she is self-employed. The driver must also have a copy of the certification when driving so it may be presented to a duly authorized Federal, State, or local enforcement official.

Discussion of Comments

The OMCS received two comments in this proceeding. Each comment was considered and is discussed below.

The Licensing Operations Division of the California Department of Motor Vehicles commented, in the case of applicant 6 (Mr. Fletcher E. Creel), that it does not oppose the granting of an exemption from the Federal vision requirements to Mr. Creel; however, the Department of Motor Vehicles will continue to impose restrictions from transporting passengers or hazardous materials on his CDL. Because the OMCS has determined that exempting Mr. Creel from the vision standard in 49 CFR 391.41(b)(10) is likely to achieve a level of safety equal to that without the exemption, the agency does not believe it is necessary to impose this further restriction upon Mr. Creel or any of the applicants, for that matter. The OMCS sets the testing and licensing standards for commercial drivers; however, it is the State that implements these standards and issues the CDL. Therefore, the State, California in this case, has jurisdiction to set licensing restrictions for commercial operations.

In another comment, the Advocates for Highway and Auto Safety (AHAS) expressed continued opposition to the FHWA's policy to grant exemptions from the Federal Motor Carrier Safety Regulations (FMCSRs) including the driver qualification standards. Specifically, the AHAS: (1) Asks the agency to clarify the consistency of the exemption application information provided at 64 FR 54948, (2) objects to the agency's reliance on conclusions drawn from the vision waiver program, (3) raises procedural objections to this proceeding, (4) claims the agency has misinterpreted statutory language on the granting of exemptions (49 U.S.C. 31315 and 31136(e)), and finally, (5) suggests that a recent Supreme Court decision affects the legal validity of vision exemptions.

On the first issue regarding clarification of exemption application information, the AHAS points to what it sees as ''inconsistencies and differences in the types of information'' provided in individual applications. The AHAS questions why the FHWA omitted information on mileage driven for 6 of the 40 applicants. This difference in the presentation of information simply reflects the OMCS' case-by-case assessments of individual applications. Total mileage driven was provided as an indicator of overall CMV experience. The omission of total mileage information for 6 of the 40 applicants is not significant since all 40 applicants have 3 years of experience operating a CMV with their vision deficiency in a period recent enough for the OMCS to verify their safety records.

The AHAS identifies other apparent inconsistencies, such as the use of different terminology describing the driving records of applicants. As previously stated at 64 FR 66962, the use of different terminology simply reflects the agency's case-by-case assessments of individual applications as to whether there were any accidents or traffic violations in a CMV in the past 3 years. Regardless of how the agency states this information—that is, in a CMV, in any vehicle or no accidents or violations, it indicates that the applicant has not had an accident or traffic violation in a CMV in the last 3 years. The use of different terminology is not, as the AHAS continues to suggest, an attempt by the OMCS to manipulate information in such a way as to ''put the best possible appearance on each petition for exemption.''

In another comment, the AHAS again suggests that the agency is ''sanitizing'' the information in the driving record to justify granting vision exemptions. As previously stated at 64 FR 66962, specific information provided on accidents and traffic violations of the applicants is a presentation of the facts as we know them and not any attempt to downplay or explain away accidents and citations as the AHAS suggests.

The AHAS also comments that ''the opinions of the ophthalmologists and especially optometrists, are not persuasive and should not be relied on by the agency.'' The opinions of the vision specialists on whether a driver has sufficient vision to perform the tasks associated with operating a CMV, are made only after a thorough vision examination including formal field of vision testing to identify any medical condition which may compromise the visual field such as glaucoma, stroke or brain tumor, and not just based on a Snellen test. The OMCS believes it can rely on medical opinions regarding whether a driver's visual capacity is sufficient to enable safe operations. The medical information is combined with information on experience and driving records in the agency's overall determination whether exempting applicants from the vision standard is likely to achieve a level of safety equal to that existing without the exemption.

The other issues raised by the AHAS which object to the agency's reliance on conclusions drawn from the vision waiver program, raise procedural objections to this proceeding, claim the agency has misinterpreted statutory language on the granting of exemptions (49 U.S.C. 31315 and 31136(e)), and finally, suggest that a recent Supreme Court decision affects the legal validity of vision exemptions, were addressed at length in 64 FR 51568 (September 23, 1999), 64 FR 66962 (November 30, 1999) and 64 FR 69586 (December 13, 1999). We see no benefit in addressing these points again and refer interested parties to those earlier discussions for reasons why the points are rejected.

Notwithstanding the OMCS' ongoing review of the vision standard, as evidenced by the medical panel's report dated October 16, 1998, and filed in this docket, the OMCS must comply with *Rauenhorst* v. *United States Department of Transportation, Federal Highway Administration,* 95 F.3d 715 (8th Cir. 1996), and grant individual exemptions

under standards that are consistent with public safety. Meeting those standards, the 40 veteran drivers in this case have demonstrated to our satisfaction that they can continue to operate a CMV with their current vision safely in interstate commerce because they have demonstrated their ability in intrastate commerce. Accordingly, they qualify for an exemption under 49 U.S.C. 31315 and 31136(e).

Conclusion

After considering the comments to the docket and based upon its evaluation of the 40 exemption applications in accordance with *Rauenhorst* v. *United States Department of Transportation, Federal Highway Administration, supra,* the OMCS exempts Herman Bailey, Jr., Mark A. Baisden, Brad T. Braegger, Kenneth Eugene Bross, Erick H. Cotton, Fletcher E. Creel, Richard James Cummings, Daniel R. Franks, William L. Frigic, Curtis Nelson Fulbright, Victor Bradley Hawks, Vincent I. Johnson, Myles E. Lane, Sr., Dennis J. Lessard, Jon G. Lima, Richard L. Loeffelholz, Herman Carl Mash, Joseph M. Porter, Richard Rankin, Robert G. Rasicot, A.W. Schollett, Melvin B. Shumaker, Clark H. Sullivan, Wayland O. Timberlake, Norman R.Wilson, Larry M. Wink, Jeffrey G. Wuensch, Jon H. Wurtele, Walter M. Yohn, Jr., Steven H. Heidorn, James Donald Simon, William A. Bixler, Woodrow E. Bohley, George L. Silvia, Martin Postma, Steven L. Valley, Phillip P. Smith, Robert W. Nicks, Frank T. Miller, and Roger Allen Dennison from the vision requirement in 49 CFR 391.41(b)(10), subject to the following conditions: (1) That each individual be physically examined every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in its driver qualification file, or keep a copy in his/her driver qualification file if he/she is self-employed. The driver must also have a copy of the certification when driving so it may be presented to a duly authorized Federal, State, or local enforcement official.

In accordance with 49 U.S.C. 31315 and 31136(e), each exemption will be valid for 2 years unless revoked earlier by the OMCS. The exemption will be revoked if (1) the person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31315 and 31136. If the exemption is still effective at the end of the 2-year period, the person may apply to the OMCS for a renewal under procedures in effect at that time.

Authority: 49 U.S.C. 322, 31315 and 31136; 49 CFR 1.73.

Julie Anna Cirillo,

Acting Director, Office of Motor Carrier Safety.

[FR Doc. 99–34043 Filed 12–30–99; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

December 21, 1999.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, N.W., Washington, D.C. 20220.

DATES: Written comments should be received on or before February 2, 2000 to be assured of consideration.

U.S. Secret Service (USSS)

OMB Number: 1555–0001.

Form Number: SSF 86A.

Type of Review: Extension.

Title: Supplemental Investigative Data.

Description: Respondents are all Secret Service applicants. These applicants, if approved for hire, will require a Top Secret Clearance, and possibly SCI Access. Responses to questions on the SSF 86A yields information necessary for the adjudication for eligibility of the clearance, as well as ensuring that applicant meets all internal agency requirements.

Respondents: Individuals or households.

Estimated Number of Respondents: 7,500.

Estimated Burden Hours Per Respondent: 1 hour.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 7,500 hours.

Clearance Officer: Sandy Bigley, (202) 406–6890, U.S. Secret Service, 7th Floor, 950 H. Street, N.W., Washington, DC 20001–4518.

OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 99–34044 Filed 12–30–99; 8:45 am]

BILLING CODE 4810–42–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

December 21, 1999.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before February 2, 2000 to be assured of consideration.

U.S. Customs Service (CUS)

OMB Number: 1515–0032.

Form Number: Customs Form 5125.

Type of Review: Extension.

Title: Application for Withdrawal of Bonded Stores for Fishing Vessels and Certification of Use.

Description: The Customs Form 5125 is used for the withdrawal and lading of bonded merchandise (especially alcoholic beverages) for use on board fishing vessels and foreign or domestic vessels involved in international trade. The form also certifies the use: total consumption or partial consumption with secure storage for use on next voyage.

Respondents: Business or other for-profit, not-for-profit institutions.

Estimated Number of Respondents: 500.

Estimated Burden Hours Per Respondent: 5 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 42 hours.

OMB Number: 1515–0041.
Form Number: Customs Form 6059B.
Type of Review: Extension.
Title: U.S. Customs Declaration.
Description: The U.S. Customs Declaration Customs Form 6059B, facilitates the clearance of persons and their goods arriving in the territory on the U.S. by requiring basic information necessary to determine Customs exception status and if any duties of taxes are due. The form is also used for the enforcement of Customs and other agencies laws and regulations.
Respondents: Individuals and households.
Estimated Number of Respondents: 60,000,000.
Estimated Burden Hours Per Respondent: 3 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 3,000,000 hours.

OMB Number: 1515–0050.
Form Number: Customs Forms 3347 and 3347A.
Type of Review: Extension.
Title: Declaration of owner of Merchandise Obtained (other than) in Pursuance of a Purchase or Agreement to Purchase and Declaration of Importer of Record When Entry is Made by an Agent.
Description: Customs Forms 3347 and 3347A allow an agent to submit, subsequent to making the entry, the declaration of the importer of record which is required by statute. These forms also permit a nominal importer of record to file the declaration of the actual owner and to be relieved of statutory liability for the payment of increased duties.
Respondents: Business or other for-profit, Individuals or households, not-for-profit institutions.
Estimated Number of Respondents: 5,700.
Estimated Burden Hours Per Respondent: 6 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 570 hours.

OMB Number: 1515–0108.
Form Number: None.
Type of Review: Extension.
Title: Declaration of a Person Abroad Who Receives and is Returning Merchandise to the U.S.
Description: The declaration is used under conditions where articles are imported and then exported and then reimported free of duty due to the declaration; it is used to insure Customs control over duty free merchandise.
Respondents: Individuals or households, Business or other for-profit.
Estimated Number of Respondents: 500.
Estimated Burden Hours Per Respondent: 10 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 250 hours.

OMB Number: 1515–0140.
Form Number: None.
Type of Review: Extension.
Title: Textile and Textile Products.
Description: Information is needed for Customs to be able to identify the Country of Origin of Textiles. The requirement prevents circumvention of bilateral agreements and ensures the proper assessment of duties. The declaration will be executed by the foreign manufacturer, exporter, or U.S. importer to be filed with the entry.
Respondents: Business or other for-profit, not-for-profit institutions.
Estimated Number of Respondents: 45,810.
Estimated Burden Hours Per Respondent : 7 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 133,582 hours.

OMB Number: 1515–0142.
Form Number: None.
Type of Review: Extension.
Title: Transfer of Cargo to a Container Station.
Description: The container station operator may file an application for transfer of a container station which is moved from the place of unlading or from a bonded carrier after transportation in-bond before filing of the entry for the purpose of breaking bulk and redelivery.
Respondents: Business or other for-profit, not-for-profit institutions.
Estimated Number of Respondents: 360.
Estimated Burden Hours Per Respondent: 6 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 2,495 hours.

OMB Number: 1515–0214.
Form Number: None.
Type of Review: Extension.
Title: Customs Modernization Act Recordkeeping Requirements.
Description: Proposed Customs regulations § 163.2 and § 163.3 provide for which records are to be maintained and which parties are required to keep those records. Proposed Customs Regulations § 163.12 also contains provisions for a voluntary recordkeeping compliance program available to all parties who are required to maintain and produce entry records.
Respondents: Business or other for-profit, not-for-profit institutions.
Estimated Number of Recordkeepers: 9,114.
Estimated Burden Hours Per Recordkeeper: 127 hours.
Estimated Total Reporting Burden: 7,977,600 hours.
Clearance Officer: J. Edgar Nichols, (202) 927–1426, U.S. Customs Service, Printing and Records Management Branch, Ronald Reagan Building, 1300 Pennsylvania Avenue, N.W., Room 3.2.C, Washington, DC 20229.
OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 99–34045 Filed 12–30–99; 8:45 am]
BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

December 23, 1999.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before February 2, 2000 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0736.
Regulation Project Number: LR–274–81 Final.
Type of Review: Extension.
Title: Accounting for Long-Term Contracts.
Description: These recordkeeping requirements are necessary to determine whether the taxpayer properly allocates indirect contract costs to extended period long-term contracts under the regulations. The recordkeeping requirement is effective for taxable years beginning after 1982. The information will be used to verify the taxpayer's allocations of some indirect costs.
Respondents: Business or other for-profit.
Estimated Number of Recordkeepers: 1,000.
Estimated Burden Hours Per Recordkeeper : 10 hours.

Estimated Total Recordkeeping Burden: 10,010 hours.

OMB Number: 1545–0913.

Regulation Project Number: FI–165–84 NPRM.

Type of Review: Extension.

Title: Below-Market Loans.

Description: Section 7872 recharacterizes a below-market loan as a market loan and an additional transfer by the lender to the borrower equal to the amount of imputed interest. The regulation requires both the lender and the borrower to attach a statement to their respective income tax returns for years in which they have either imputed income or claim imputed deductions under section 7872.

Respondents: Business or other for-profit, Individuals or households.

Estimated Number of Respondents: 1,631,202.

Estimated Burden Hours Per Respondent: 18 minutes.

Frequency of Response: On occasion, Annually.

Estimated Total Reporting Burden: 481,722 hours.

OMB Number: 1545–1018.

Regulation Project Number: FI–27–89 Temporary and Final and FI–61–91 Final.

Type of Review: Extension.

Title: Real Estate Mortgage Investment Conduits; Reporting Requirements and Other Administrative Matters (FI–27–89); and Allocation of Allocable Investment Expense; Original Issue Discount Reporting Requirements (FI–61–91).

Description: The regulations prescribe the manner in which an entity elects to be taxed as a real estate mortgage investment conduit (REMIC) and the filing requirements for REMICs and certain brokers.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 655.

Estimated Burden Hours Per Respondent: 1 hour, 30 minutes.

Frequency of Response: Quarterly.

Estimated Total Reporting Burden: 978 hours.

OMB Number: 1545–1146.

Regulation Project Number: PS–54–89 Final.

Type of Review: Extension.

Title: Applicable Conventions Under the Accelerated Cost Recovery System.

Description: The regulations describe the time and manner of making the notation required to be made on Form 4562 under certain circumstances when the taxpayer transfers property in certain non-recognition transactions. The information is necessary to monitor compliance with the section 168 rules.

Respondents: Business or other for-profit, Farms.

Estimated Number of Respondents: 700.

Estimated Burden Hours Per Respondent: 6 minutes.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 70 hours.

OMB Number: 1545–1290.

Regulation Project Number: FI–81–86 Final.

Type of Review: Extension.

Title: Bad Debt Reserves of Banks.

Description: Section 585(c) of the Internal Revenue Code requires large banks to change from the reserve method of accounting to the specific charge off method of accounting for bad debts. The information required by section 1.585–8 of the regulations identifies any election made or revoked by the taxpayer in accordance with section 585(c).

Respondents: Business or other for-profit.

Estimated Number of Respondents: 2,500.

Estimated Burden Hours Per Respondent: 15 minutes.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 625 hours.

OMB Number: 1545–1191.

Regulation Project Number: INTL–868–89 Final.

Type of Review: Extension.

Title: Information with Respect to Certain Foreign-Owned Corporations.

Description: The regulations require record maintenance, annual information filing, and the authorization of the U.S. corporation to act as an agent for IRS summons purposes. These requirements allow IRS international examiners to better audit the tax returns of U.S. corporations engaged in cross-border transactions with a related party.

Respondents: Business or other for-profit, individuals or households.

Estimated Number of Respondents: 63,000.

Estimated Burden Hours Per Respondent: 10 hours.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 630,000 hours.

OMB Number: 1545–1428.

Form Number: IRS Form 8023.

Type of Review: Extension.

Title: Election Under Section 338 for Corporations Making Qualified Stock Purchases.

Description: Form 8023 is used by corporations that acquire the stock of another corporation to elect to treat the purchase of stock as a purchase of the other corporation's assets. The IRS uses Form 8023 to determine if the purchasing corporation reports the sale of its assets on its income tax return and to determine if the purchasing corporation has properly made the election.

Respondents: Business or other for-profit.

Estimated Number of Respondents/Recordkeepers: 201.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—14 hr., 50 min.

Learning about the law or the form—2 hr., 29 min.

Preparing and sending the form to the IRS—2 hr., 50 min.

Frequency of Response: On occasion.

Estimated Total Reporting/Recordkeeping Burden: 4,048 hours.

OMB Number: 1545–1557.

Revenue Procedure Number: Revenue Procedure 99–39.

Type of Review: Extension.

Title: Form 941 e-file Program.

Description: Revenue Procedure 99–39 provides guidance and the requirements for participating in the Form 941 e-file Program.

Respondents: Business or other for-profit, not-for-

profit institutions, Federal Government, State, Local or Tribal Government.

Estimated Number of Respondents/Recordkeepers: 390,200.

Estimated Burden Hours Per Respondent/Recordkeeper: 37 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting/Recording Burden: 238,863 hours.

Clearance Officer: Garrick Shear, Internal Revenue Service, Room 5244, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 99–34046 Filed 12–30–99; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8832

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort

to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8832, Entity Classification Election.

DATES: Written comments should be received on or before March 3, 2000 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Entity Classification Election.

OMB Number: 1545–1516.

Form Number: 8832.

Abstract: An eligible entity that chooses not to be classified under the default rules of Treas. Reg. 301.7701 or that wishes to change its current classification must file Form 8832 to elect a classification. The IRS will use the information entered on this form to establish the entity's filing and reporting requirements for Federal tax purposes.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations and farms.

Estimated Number of Respondents: 5000.

Estimated Time Per Respondent: 3 hr., 18 min.

Estimated Total Annual Burden Hours: 16,500.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) The accuracy of the agency's estimate of the burden of the collection of Information; (c) Ways to enhance the quality, utility, and clarity of the information to be collected; (d) Ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: December 21, 1999.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 99–34005 Filed 12–30–99; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8709

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8709, Exemption From Withholding on Investment Income of Foreign Governments and International Organizations.

DATES: Written comments should be received on or before March 3, 2000 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Exemption From Withholding on Investment Income of Foreign Governments and International Organizations.

OMB Number: 1545–1053.

Form Number: 8709.

Abstract: This form is used by foreign governments and international organizations, with certain types of investments in the United States, to file with withholding agents to obtain exemption from withholding under Internal Revenue Code section 892. The withholding agent uses the information to determine the appropriate withholding, if any.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Responses: 30,000.

Estimated Time Per Response: 1 hr., 25 min.

Estimated Total Annual Burden Hours: 42,600.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) The accuracy of the agency's estimate of the burden of the collection of information; (c) Ways to enhance the quality, utility, and clarity of the information to be collected; (d) Ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation,

maintenance, and purchase of services to provide information.

Approved: December 20, 1999.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 99–34006 Filed 12–30–99; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[FI–7–94; FI–36–92]

Proposed Collection; Comment Request For Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning existing final regulations, FI–7–94 (TD 8718; TD 8538) and FI–36–92 (TD 8476), Arbitrage Restrictions on Tax-Exempt Bonds (§§ 1.148–2, 1.148–3, 1.148–4, 1.148–7, and 1.148–11).

DATES: Written comments should be received on or before March 3, 2000 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5242, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Arbitrage Restrictions on Tax-Exempt Bonds.

OMB Number: 1545–1347.

Regulation Project Numbers: FI–36–92; FI–7–94.

Abstract: Section 148 of the Internal Revenue Code requires issuers of tax-exempt bonds to rebate certain arbitrage profits earned on nonpurpose investments acquired with the bond proceeds. Under FI–36–92, issuers are required to file a Form 8038–T and remit the rebate. Issuers are also required to keep records of certain interest rate hedges so that the hedges are taken into account in determining arbitrage profits. Under FI–7–94, the scope of interest rate hedging transactions covered by the arbitrage regulations was broadened by requiring that hedges entered into prior to the sale date of the bonds are covered as well.

Current Actions: There is no change to these existing regulations.

Type of Review: Extension of a currently approved collection.

Affected Public: State, local or tribal governments.

Estimated Number of Respondents: 3,100.

Estimated Time Per Respondent: 14 hr., 34 min.

Estimated Total Annual Burden Hours: 42,050.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: December 21, 1999.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 99–34007 Filed 12–30–99; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[PS–105–75]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, PS–105–75 (TD 8348), Limitations on Percentage Depletion in the Case of Oil and Gas Wells (Section 1.613A–3(l)).

DATES: Written comments should be received on or before March 3, 2000, to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Limitations on Percentage Depletion in the Case of Oil and Gas Wells.

Regulation Project Number: PS–105–75 (Final).

Abstract: Section 1.613A–3(l) of the regulation requires each partner to separately keep records of his or her share of the adjusted basis of partnership oil and gas property and requires each partnership, trust, estate, and operator to provide to certain persons the information necessary to compute depletion with respect to oil or gas.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

The burden associated with this collection of information is reflected on Forms 1065, 1041, and 706.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: December 21, 1999.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 99–34008 Filed 12–30–99; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1120X

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1120X, Amended U.S. Corporation Income Tax Return.

DATES: Written comments should be received on or before March 3, 2000 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Amended U.S. Corporation Income Tax Return.

OMB Number: 1545–0132.

Form Number: 1120X.

Abstract: Domestic corporations use Form 1120X to correct a previously filed Form 1120 or Form 1120–A. The data is used to determine if the correct tax liability has been reported.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations and farms.

Estimated Number of Respondents: 16,699.

Estimated Time Per Respondent: 17 hr., 58 min.

Estimated Total Annual Burden Hours: 300,081.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: December 21, 1999.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 99–34009 Filed 12–30–99; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 706–CE

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 706–CE, Certificate of Payment of Foreign Death Tax.

DATES: Written comments should be received on or before March 3, 2000 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Certificate of Payment of Foreign Death Tax.

OMB Number: 1545–0260.

Form Number: 706–CE.

Abstract: Form 706–CE is used by the executors of estates to certify that foreign death taxes have been paid so that the estate may claim the foreign

death tax credit allowed by Internal Revenue Code section 2014. The information is used by IRS to verify that the proper credit has been claimed.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individual or households.

Estimated Number of Respondents: 2,250.

Estimated Time Per Respondent: 1hr., 44 min.

Estimated Total Annual Burden Hours: 3,893.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: December 20, 1999.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 99–34010 Filed 12–30–99; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[IA–14–91]

Proposed Collection; Comment Request For Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, IA–14–91 (TD 8454), Adjusted Current Earnings (§ 1.56(g)–1).

DATES: Written comments should be received on or before March 3, 2000 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Adjusted Current Earnings.

Regulation Project Number: IA–14–91 (Final).

Abstract: Section 1.56(g)–1(r) of the regulation sets forth rules pursuant to section 56(g) of the Internal Revenue Code that permit taxpayers to elect a simplified method of computing their inventory amounts in order to compute their alternative minimum tax.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 1,000.

Estimated Time Per Respondent: 1 hr.

Estimated Total Annual Burden Hours: 1,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: December 20, 1999.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 99–34011 Filed 12–30–99; 8:45 am]

BILLING CODE 4830–01–U

Federal Register

Monday
January 3, 2000

Part II

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Part 223

Endangered and Threatened Species; Proposed Rule Governing Take of Seven Threatened Evolutionarily Significant Units (ESUs); Proposed Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 223

[Docket No. 991207323–9323–01; I.D. No 092199A]

RIN 0648–AM59

Endangered and Threatened Species; Proposed Rule Governing Take of Seven Threatened Evolutionarily Significant Units (ESUs) of West Coast Salmonids: Oregon Coast Coho; Puget Sound, Lower Columbia and Upper Willamette Chinook; Hood Canal Summer-run and Columbia River Chum; and Ozette Lake Sockeye

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

ACTION: Proposed rule; request for comments and notice of public hearings.

SUMMARY: Under section 4(d) of the Endangered Species Act (ESA), the Secretary of Commerce (Secretary) is required to adopt such regulations as he deems necessary and advisable for the conservation of species listed as threatened. This proposed ESA 4(d) rule represents the regulations NMFS believes necessary and advisable to conserve the seven listed threatened salmonid ESUs. Note that this rule applies only to the identified coho, chinook, chum, and sockeye species. Effects resulting from implementation of activities on other listed species (e.g., bull trout) must be addressed through ESA section 7 and section 10 processes, as appropriate. The rule would apply the take prohibitions enumerated in section 9(a)(1) of the ESA in most circumstances to one coho salmon ESU, three chinook salmon ESUs, two chum salmon ESUs, and one sockeye salmon ESU. NMFS does not find it necessary or advisable to apply the take prohibitions to specified categories of activities that contribute to conserving listed salmonids or are governed by a program that adequately limits impacts on listed salmonids. The proposed rule describes 13 such limits on the application of the take prohibitions.

DATES: Comments on this proposed rule must be received at the appropriate address (see ADDRESSEES), no later than 5:00 p.m., eastern standard time, on March 3, 2000. Public hearings on this proposed action have been scheduled. See **SUPPLEMENTARY INFORMATION** for dates and times of public hearings.

ADDRESSES: Written comments and requests for information should be sent to NMFS, Protected Resources Division, Northwest Region, 525 NE Oregon Street, Suite 500, Portland, OR 97232–2737. Comments will not be accepted if submitted via e-mail or Internet. See **SUPPLEMENTARY INFORMATION** for locations of public hearings. Parties interested in receiving notification of the availability of new or amended Fishery Management and Evaluation Plans (FMEPs) or Hatchery and Genetic Management Plans (HGMPs) should contact Chief, Hatchery/Inland Fisheries Branch, NMFS, Northwest Region, 525 NE Oregon Street, Suite 510, Portland, OR 97232–2737.

Parties interested in receiving notification of the availability of draft Watershed Conservation Plan Guidelines or draft changes to Oregon Department of Transportation's (ODOTs) 1999 Maintenance of Water Quality and Habitat Guide should contact Branch Chief, Protected Resources Division, NMFS, Northwest Region, 525 NE Oregon Street, Suite 500, Portland, OR 97232-2737.

FOR FURTHER INFORMATION CONTACT: Garth Griffin at 503–231–2005.

SUPPLEMENTARY INFORMATION:

Background

On August 10, 1998 (63 FR 42587), NMFS, on behalf of the Secretary, published a final rule listing the Oregon Coast (OC) ESU of coho salmon(*Oncorhynchus kisutch*, or *O. kisutch*)in Oregon as threatened. By a rule published on March 24, 1999 (64 FR 14308), NMFS listed as threatened the Puget Sound (PS), Lower Columbia River (LCR) and Upper Willamette River (UWR) ESUs of west coast chinook salmon (*Oncorhynchus tshawytscha*, or *O. tshawytscha*) in Washington and Oregon. By a rule published on March 25, 1999 (64 FR 14508), NMFS listed as threatened the Hood Canal Summer-run (HCS) and Columbia River (CR) chum salmon ESUs (*Oncorhynchus keta*) in Washington and Oregon. By a rule published on March 25, 1999 (64 FR 14528), NMFS listed as threatened the Ozette Lake ESU of sockeye salmon (*Oncorhynchus nerka*) in Washington. Those final rule listing notifications describe the background of the listing actions and provides a summary of NMFS' conclusions regarding the status of the threatened coho, chinook, chum and sockeye salmon ESUs.

Section 4(d) of the ESA provides that whenever a species is listed as threatened, the Secretary shall issue such regulations as he deems necessary and advisable to provide for the conservation of the species. Such protective regulations may include any or all of the prohibitions that apply automatically to protect endangered species under ESA section 9(a). Those section 9(a) prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (including harass, harm, pursue, hunt, shoot, wound, kill, trap, or collect; or to attempt any of these), import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any wildlife species listed as endangered, unless with written authorization for incidental take. It is also illegal under ESA section 9 to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Section 11 of the ESA provides for civil and criminal penalties for violation of section 9 or of regulations issued under the ESA.

Whether take prohibitions or other protective regulations are necessary or advisable is in large part dependent upon the biological status of the species and potential impacts of various activities on the species. These species have survived for thousands of years through cycles in ocean conditions and weather. NMFS concludes that threatened chinook, coho, chum and sockeye are at risk of extinction primarily because their populations have been reduced by human ''take''. West Coast populations of these salmonids have been depleted by take resulting from harvest, past and ongoing destruction of freshwater and estuarine habitats, poor hatchery practices, hydropower development, and other causes. ''Factors Contributing to the Decline of Chinook Salmon: An Addendum to the 1996 West Coast Steelhead Factors for Decline Report'' (NMFS, 1998) concludes that all of the factors identified in section 4(a)(1) of the ESA have played some role in the decline of the species. The report identifies destruction and modification of habitat, overutilization, and hatchery effects as significant reasons for the decline. While the most influential factors differ from ESU to ESU and among chinook, coho, sockeye, and chum, habitat and harvest impacts have been important for all. Therefore it is necessary and advisable in most circumstances to apply the section 9 take prohibitions to these threatened ESUs, in order to provide for their conservation.

Several ESUs of West Coast steelhead that are impacted by similar risks associated with human-caused take have also recently been listed as threatened, and section 4(d) regulations

are to be proposed for them in a separate **Federal Register** document. These listings have created a great deal of interest among states, counties and others in adjusting their programs that may affect the listed species to ensure they are consistent with salmonid conservation. (see, e.g., *Strahan* v. *Coxe*, 127 F.3d 155 (1st Cir. 1997), *cert. denied*, 119 S.Ct 81 (1998)). These entities have asked NMFS to provide clarity and guidance on what activities may adversely affect salmonids and how to avoid or limit those adverse effects, and to apply take prohibitions only where other governmental programs and efforts are inadequate to conserve threatened salmonids.

Although the primary purpose of state, local and other programs is generally to further some activity other than conserving salmon, such as maintaining roads, controlling development, ensuring clean water or harvesting trees, some entities have adjusted one or more of these programs to protect and conserve listed salmonids. NMFS believes that with appropriate safeguards, many such activities can be specifically tailored to minimize impacts on listed salmonids to an extent that makes additional Federal protections unnecessary for conservation of the listed ESU.

NMFS, therefore, proposes a mechanism whereby entities can be assured that an activity they are conducting or permitting is consistent with ESA requirements and avoids or minimizes the risk of take of listed salmonid. When such a program provides sufficient conservation for listed salmonids, NMFS does not find it necessary and advisable to apply take prohibitions to activities governed by those programs. In those circumstances, described in more detail here, additional Federal ESA regulation through the take prohibitions is not necessary and advisable because it would not meaningfully enhance the conservation of the listed ESUs. In fact, declining to apply take prohibitions to such programs likely will result in greater conservation gains for a listed ESU than would blanket application of take prohibitions, through the program itself and by demonstrating to similarly situated entities that practical and realistic salmonid protection measures exist. An additional benefit of this approach is that NMFS can focus its enforcement efforts on activities and programs that have not yet adequately addressed the conservation needs of listed ESUs.

NMFS anticipates consideration in the Spring of 2000 of a comprehensive proposal for the conservation of salmonids by a broad array of county, municipal and other local governments whose effects on listed salmonids are interrelated because of their shared watersheds, transportation and water systems, or growth management strategies. This proposal is being developed by jurisdictions representing a majority of the population within King, Snohomish and Pierce counties in Washington State which includes among its many municipal participants the cities of Seattle, Tacoma, Everett and Bellevue. In addition to its conservation objectives, the completed proposal would be intended to allow NMFS to determine that it is not necessary or advisable to apply take prohibitions to a broad array of related governmental activities. An aggressive schedule has been established for the completion of this proposal by April 2000.

NMFS believes it beneficial to conservation planning by local governments generally to seek comment soon on the framework of the conservation program. NMFS will seek comment on this framework by sending notification of the availability of that framework to the **Federal Register** within 30 days of receiving a framework that NMFS finds acceptable in concept.

In April 2000, NMFS anticipates seeking comment on the completed program through a proposal by NMFS to limit take prohibitions for related activities prior to the application of such prohibitions to the Puget Sound ESU.

Substantive Content of Proposed Regulation

NMFS has not previously proposed any protective regulations for six of the salmonid ESUs subject to this proposed rule. When NMFS first proposed the Oregon Coast coho for listing (60 FR 38026, July 25, 1995), it also proposed to apply the prohibitions of ESA section 9(a) to that ESU. NMFS received very little comment or response on that issue. However, because NMFS now proposes to limit the application of section 9(a) prohibitions for several additional programs, NMFS is issuing a revised proposal for the Oregon Coast coho ESU, in order to have the benefit of public comment before enacting final protective regulations.

NMFS concludes that at this time, the take prohibitions generally applicable for endangered species are necessary and advisable for conservation of these threatened ESUs, but that take of listed salmon in the seven listed ESUs need not be prohibited when it results from a specified subset of activities described here. These are activities that are conducted in a way that contributes to conserving the listed ESUs, or are governed by a program that limits impacts on listed salmonids to an extent that makes added protection through Federal regulation not necessary and advisable for conservation of an ESU. Therefore, NMFS now proposes to apply ESA section 9 prohibitions to these seven threatened salmonid ESUs, but not to apply the take prohibitions to the 13 programs described in this document as meeting that level of protection. Of course, the entity responsible for any habitat-related programs might equally choose to seek an ESA section 10 permit.

Working with state and local jurisdictions and other resource managers, NMFS has identified several programs for which it is not necessary and advisable to impose take prohibitions because they contribute to conserving the ESU or are governed by a program that adequately limits impacts on listed salmonids. Under specified conditions and in appropriate geographic areas, these include: (1) activities conducted in accord with ESA incidental take authorization; (2) ongoing scientific research activities, for a period of 6 months; (3) emergency actions related to injured, stranded, or dead salmonids; (4) fishery management activities; (5) hatchery and genetic management programs; (6) activities in compliance with joint tribal/state plans developed within *United States* v. *Washington* or *United States* v. *Oregon*. (7) scientific research activities permitted or conducted by the states; (8) state, local, and private habitat restoration activities; (9) properly screened water diversion devices; (10) road maintenance activities in Oregon; (11) certain park maintenance activities in the City of Portland, Oregon; (12) certain development activities within urban areas; and (13) forest management activities within the state of Washington. Following is a summary of each of these programs, or potential limits on the take prohibitions. Some limits apply within all seven ESUs, and some to a subset thereof.

NMFS emphasizes that these limits are not prescriptive regulations. The fact of not being within a limit would not mean that a particular action necessarily violates the ESA or this regulation. The limits describe circumstances in which an entity or actor can be certain it is not at risk of violating the take prohibition or of consequent enforcement actions, because the take prohibition would not apply to programs within those limits.

The limits on the take prohibitions do not relieve Federal agencies of their duty under section 7 of the ESA to consult with NMFS if actions they fund,

authorize, or carry out may affect listed species. Of course, to the extent that actions subject to section 7 consultation are consistent with a circumstance for which NMFS has limited the take prohibitions, the consultation will be greatly simplified because of the analysis earlier done with respect to that circumstance.

NMFS wishes to continue to work collaboratively with all affected governmental entities to recognize existing management programs that conserve and meet the biological requirements of salmonids, and to strengthen other programs toward conservation of listed salmonids. For programs that meet those needs, NMFS can provide ESA coverage through 4(d) rules, section 10 research and enhancement permits or incidental take permits, or through section 7 consultations with Federal agencies. A 4(d) rule may be amended to add new limits on the take prohibitions, or to amend or delete limits as circumstances warrant.

Concurrent with this proposed rule, NMFS proposes a limit on the take prohibitions for actions in accord with any tribal resource management plan that the Secretary has determined will not appreciably reduce the likelihood of survival and recovery of a threatened ESU. That proposal is published elsewhere in the Proposed Rules section of this **Federal Register** issue.

Electronic Access

The Oregon Aquatic Restoration Guidelines is accessible via the Internet at *www.oregon-plan.org/hab_*guide. The Washington Fish Passage Design at Road Culverts is accessible via the Internet at *www.wa.gov:80/wdfw/hab/engineer/cm/culvertm.htm*. To the extent possible, NMFS will post other documents referenced in this rule on its Northwest region web site at *www.nwr.noaa.gov*.

Take Guidance

On July 1, 1994, (59 FR 34272) NMFS and the U.S. Fish and Wildlife Service 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.

As a matter of law, impacts on listed salmonids due to actions in compliance with a permit issued by NMFS pursuant to section 10 of the ESA are not violations of this rule. Section 10 permits may be issued for research activities, enhancement of the species' survival, or to authorize incidental take occurring in the course of an otherwise lawful activity. Likewise federally-funded or approved activities for which ESA section 7 consultations have been completed for listed salmonids, and which are conducted in accord with all reasonable and prudent measures, terms, and conditions provided by NMFS in a biological opinion and accompanying incidental take statement pursuant to section 7 of the ESA will not constitute violations of this rule. NMFS consults on a broad range of activities conducted, funded or authorized by Federal agencies, including fisheries harvest, hatchery operations, silviculture, grazing, mining, road construction, dam construction and operation, discharge of fill material, stream channelization or diversion.

With respect to other activities:

1. Based on available information, NMFS believes the following activities are very likely to injure or kill salmonids, and result in a violation of this rule unless within a limit on the take prohibitions provided in this proposed rule. These are the categories of activity upon which NMFS enforcement resources are likely to concentrate.

A. Except as provided in this proposed rule, collecting, handling, or harassing listed salmonids, including illegal harvest activities.

B. Diverting water through an unscreened or inadequately screened diversion at times when juvenile salmonids are present.

C. Physical disturbance or blockage of the streambed where spawners or redds are present concurrent with the disturbance. The disturbance could be mechanical disruption from creating push-up dams, gravel removal, mining, or other work within a stream channel, trampling or smothering of redds by livestock in the streambed, driving vehicles or equipment across or down the streambed, and similar physical disruptions.

D. Discharges or dumping of toxic chemicals or other pollutants (e.g., sewage, oil, gasoline) into waters or riparian areas supporting the listed salmonids, particularly when done outside of a valid permit for the discharge.

E. Blocking fish passage through fills, dams, or impassable culverts.

F. Interstate and foreign commerce of listed salmonids and import/export of listed salmonids without an ESA permit, unless the fish were harvested pursuant to this rule.

2. Based upon available information, NMFS believes that the category of activities which may injure or kill listed salmonids and result in a violation of this proposed rule (unless within an ''exception'' provided in this proposed rule) includes, but is not limited to:

A. Water withdrawals that impact spawning or rearing habitat.

B. Diversion or discharge of flows that results in excessive, or excessive fluctuation of, stream temperatures.

C. Aside from the habitat restoration activities to which this rule does not apply take prohibitions, destruction or alteration of salmonid habitat, such as through removal of large woody debris, ''sinker logs,'' riparian canopy or other riparian functional elements; dredging; discharge of fill material; or through alteration of surface or ground water flow by draining, ditching, gating, diverting, blocking, or altering stream or tidal channels (including side channels wetted only during high flows and connected ponds).

D. Land-use activities that adversely affect salmonid habitat (e.g., logging, grazing, farming, urban development, or road construction in riparian areas) (See, e.g., 64 FR 60727, November 8, 1999)(definition of ''harm'' contained in the ESA).

E. Physical disturbance or blockage of the streambed in places where spawning gravels are present.

F. Violation of Federal or state Clean Water Act (CWA) discharge permits through actions that actually impact water quality, and thus may harm listed salmonids. Likelihood of harm is increased where the receiving waters are not currently meeting water quality standards for one or more components of the discharge.

G. Pesticide and herbicide applications that adversely affect the biological requirements of the species.

H. Introduction of non-native species likely to prey on listed salmonids or displace them from their habitat.

I. Altering habitat of listed salmonids in a way that promotes the development of predator populations or makes listed salmonids more susceptible to predation.

Enforcement activity may be initiated regarding these or any other activities that harm protected salmonids. NMFS' clear preference, however, is for persons or entities who believe their activity presents significant risk given the above guidance to immediately modify that activity to avoid take and actively pursue an incidental take statement or permit through negotiations with NMFS, or shape those activities to come within one of the limits on the take prohibitions described in this proposed rule. Numerous local watershed councils, the Lower Columbia Fish

Recovery Board, the Willamette Restoration Initiative, and many other local and regional governmental efforts, including that in the Tri-county area around Seattle, are already actively working to solve habitat problems that limit salmonid health and productivity. An entity that is moving forward in coordination with NMFS to promptly implement credible and reliable conservation measures will gain a good understanding of any actions that may be creating an emergency situation for listed fish or otherwise demand enforcement action. For example, if water availability is a limiting factor and local water users and the state are working toward solutions with NMFS through any of a variety of mechanisms (such as conservation, supplementing instream flows, development of an ESA section 10 habitat conservation plan, etc.), the users will quickly gain a pretty clear picture of any immediate adjustments that must be made in order not to create a high risk of harming salmonid eggs, juveniles or adults.

3. There is also a category of activities which, while individually unlikely to injure or kill listed salmonids, may collectively cause significant detrimental impact on salmonids through water quality changes; climate change that affects ocean conditions; or cumulative pollution due to storm runoff carrying lawn fertilizers, pesticides, or road and driveway pollutants. Therefore, it is important that individuals alter their daily behaviors to reduce these impacts as much as possible, and for governmental entities to seek programmatic incentives, public education, regulatory changes, or other approaches to accomplish that reduction. These activities include, but are not limited to:

A. Discharges to streams that are not listed under section 303(d) of the CWA as water quality limited, when the discharge is in full compliance with current National Pollutant Discharge Elimination System permits.

B. Individual decisions about energy consumption for heating, travel, and other purposes.

C. Individual maintenance of residences or gardens.

These lists are not exhaustive. They are intended to provide some examples of the types of activities that might or might not be pursued by NMFS as constituting a take of listed salmonids under the ESA and its regulations. Questions regarding whether specific activities constitute a violation of this proposed rule, and general inquiries regarding prohibitions and permits, should be directed to NMFS (see **ADDRESSES**).

Aids for Understanding the Limits on the Take Prohibitions

Issue 1: 50 CFR 222.307(c)(2)

Included here are several references to 50 CFR 222.307(c)(2) (see 64 FR 14051, March 23, 1999, final rule consolidating NMFS' ESA regulations) which are criteria for issuance of an incidental take permit. For convenience of those commenting on this proposed rule, the criteria listed in 50 CFR 222.307(c)(2) are:

(1) the taking will be incidental; (2) the applicant will, to the maximum extent practicable, monitor, minimize and mitigate the impacts of such taking; (3) the taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild; (4) the applicant has amended the conservation plan to include any measures (not originally proposed by the applicant) that the Assistant Administrator determines are necessary or appropriate; and (5) there are adequate assurances that the conservation plan will be funded and implemented, including any measures required by the Assistant Administrator.

Issue 2: Population and Habitat Concepts

This proposed rule references scientific concepts that NMFS proposes to use in determining whether particular programs need not fall within the scope of the ESA section 9 take prohibitions. One of these concepts allows for identifying populations that may warrant individual management within established ESUs on some issues. The second involves identifying relevant biological parameters to evaluate the status of these populations and identifying ''critical thresholds'' and ''viable thresholds.'' NMFS is developing a scientific and policy paper entitled ''Viable Salmonid Populations'' (NMFS, December 1999) that addresses the biological concepts surrounding viable salmonid populations in more detail, and invites comment on that draft (see **ADDRESSES**). Once fully developed (including public and peer review), this paper will provide additional guidance in evaluating programs for eligibility under this ESA 4(d) rule.

A third concept describes the freshwater habitat biological requirements of salmonids in terms of whether habitat is functioning properly.

Identifying Populations within ESUs

NMFS proposes to define populations following Ricker's (1972) definition of ''stock'': a population is a group of fish of the same species spawning in a particular lake or stream (or portion thereof) at a particular season which to a substantial degree do not interbreed with fish from any other group spawning in a different place or in the same place at a different season. This definition is widely accepted and applied in the field of fishery management. An independent population is an aggregation of one or more local breeding units that are closely linked by exchange of individuals among themselves, but are sufficiently isolated from other independent populations that exchanges of individuals among populations do not appreciably affect the population dynamics or extinction risk of the populations over a 100 year time frame. Such populations will generally be smaller than the whole ESU, and will generally inhabit geographic ranges on the scale of whole river basins or major sub-basins that are relatively isolated from outside migration. Using this definition, it is biologically meaningful to evaluate and discuss the extinction risk of one population independently of other populations within the same ESU.

Several types of information may be used to identify independent salmonid populations within existing ESUs, including (1) geographic indicators; (2) estimates of adult dispersal; (3) abundance correlations; (4) habitat characteristics; (5) genetic markers; and (6) quantitative traits. States and other groups involved in salmonid management have defined groups of fish for management purposes based on some or all of this information, and many of the definitions already used by managers are similar to the population definition proposed here. Further, while the types of information identified above may be useful in defining independent populations within ESUs, other methods may exist for identifying biologically meaningful population units consistent with the definitions adopted here. Therefore, NMFS will evaluate proposed population boundaries on a case-by-case basis to determine if such boundaries are biologically supportable and consistent with the population definition in this rule.

NMFS believes it important to identify population units within established ESUs for several reasons. Identifying and assessing impacts on such units will enable greater consideration of the important biological diversity contained within each ESU, a factor considered in NMFS' ESU policy (Waples 1991). Further, assessing impacts on a population level is typically a more practical undertaking given the scale and complexity of ESUs.

Finally, assessing impacts on a population level will help ensure consistent treatment of listed salmonids across a diverse geographic and jurisdictional range.

Assessing Population Status

NMFS proposes to evaluate population status through four primary biological parameters: (1) Abundance; (2) productivity; (3) population substructure; and (4) genetic diversity. A discussion of the relevance of these parameters to salmonid population status may be found in a variety of scientific documents (e.g., Nehlsen et al. 1991; Burgman et al. 1993; Huntington et al. 1996; Caughley and Gunn 1996; Myers et al. 1998).

Population abundance is important to evaluate due to potential impacts associated with genetic and demographic risks. Genetic risks associated with low population size include inbreeding depression and loss of genetic diversity. Demographic risks associated with low population size include random effects associated with stochastic environmental events. Population size may be assessed and estimated from dam and weir counts, redd counts, spawner surveys, and other means. Viable abundance levels may be determined, based on historic abundance levels or habitat capacity of the population.

Population productivity may be thought of as the population's ability to increase or maintain its abundance. It is important to assess productivity since negative trends in productivity over sustained periods may lead to genetic and demographic impacts associated with small population sizes. However, trends in other parameters such as survival between life stages, age structure, and fecundity may also be useful in assessing productivity. In general, viable population trends should be positive unless the population is already at or above viable abundance levels. In that case, neutral or negative population trends may be acceptable so long as such declines will not lead the population to decline below viable abundance levels in the foreseeable future.

Population structure reflects the number, size and distribution of remaining habitat patches and the condition of migration corridors that provide linkages among these habitat types. Population structure affects evolutionary processes and may impact the ability of populations to respond to environmental changes or stochastic events. Habitat deficiencies, such as loss of migration corridors between habitat types, can lead to a high risk of extinction and may not become readily apparent through evaluating population sizes or productivity. Determining whether viable population structure exists may require comparison of existing and historic habitat conditions.

Population diversity is important because variation among populations is likely to buffer them against short term environmental change and stochastic events. Population diversity may be assessed by examining life history traits such as age, and run and spawn timing distributions. Further, more direct analysis of genetic diversity through DNA analysis may provide an indication of diversity. Viable population diversity will likely be determined through comparisons to historic information or comparisons to other populations existing in relatively undisturbed conditions. Ultimately, population diversity must be sufficient to buffer the population against normal environmental variation.

Establishing Population Thresholds

In applying the concepts discussed here to harvest and artificial propagation actions, NMFS relies on two functional thresholds of population status: (1) Critical population threshold, and (2) viable population threshold. The critical population threshold refers to a minimal functional level below which a population's risk of extinction increases exponentially in response to any additional genetic or demographic risks.

The viable population threshold refers to a condition where the population is self-sustaining, and not at risk of becoming endangered in the foreseeable future. This threshold reflects the desired condition of individual populations and of their contribution to recovery of the ESU as a whole. Proposed actions must not preclude populations from attaining this condition.

Evaluating Habitat Conditions

This proposed rule restricts application of the take prohibitions when land and water management activities that are conducted in a way that will help attain or protect properly functioning habitat. Properly functioning habitat conditions create and sustain the physical and biological features that are essential to conservation of the species, whether important for spawning, breeding, rearing, feeding, migration, sheltering, or other functions. Such features include water quantity; water quality attributes such as temperature, pH, oxygen content, etc; suitability of substrate for spawning; freedom from passage impediments; and availability of pools and other shelter. These features are not static; the concept of proper function recognizes that natural patterns of habitat disturbance, such as through floods, landslides and wildfires, will continue. Properly functioning habitat conditions are conditions that sustain a watershed's natural habitat-affecting processes (bedload transport, riparian community succession, precipitation runoff patterns, channel migration, etc.) over the full range of environmental variation, and that support salmonid productivity at a viable population level. Specific criteria associated with achieving these conditions are listed with each habitat-related limit on take prohibitions.

Issue 3: Direct and Incidental Take

Section 4(d) of the ESA requires that such regulations be adopted as are ''necessary and advisable to provide for the conservation of'' the listed species. In discussing the limits on the take prohibitions, NMFS does not generally distinguish ''incidental'' from ''direct'' take because that distinction is not required or helpful under section 4(d). The biological impact of take on the ESU is the same, whether a particular number of listed fish are lost as a result of incidental impacts or directed impacts. Hence the following descriptions of harvest and artificial propagation programs for which NMFS does not find it necessary and advisable to impose take prohibitions do not, as a general rule, make that distinction. Rather, those descriptions and criteria focus on the impacts of all take associated with a particular activity of the biological status of the listed ESU. (The distinction is retained in the discussion of scientific research targeted on listed fish, because the limit on take prohibitions applies in that situation only to research by agency personnel or agency contractors.)

Issue 4: Applicability to Specific ESUs

In the regulatory language in this proposed rule, the limits on applicability of the take prohibitions to a given ESU is accomplished through citation to the Code of Federal Regulations (CFR) enumeration of threatened marine and anadromous species, 50 CFR 223.102. For the convenience of readers of this notice, 50 CFR 223.102 refers to threatened salmonid ESUs through the following designations:

(a)(1) Snake River spring/summer chinook

(a)(2) Snake River fall chinook

(a)(3) Central California Coast coho

(a)(4) Southern Oregon/Northern California Coast coho

(a)(5) Central California Coast steelhead
(a)(6) South-Central California Coast steelhead
(a)(7) Snake River Basin steelhead
(a)(8) Lower Columbia River steelhead
(a)(9) Central Valley, California steelhead
(a)(10) Oregon Coast coho
(a)(12) Hood Canal summer-run chum
(a)(13) Columbia River chum
(a)(14) Upper Willamette River steelhead
(a)(15) Middle Columbia River steelhead
(a)(16) Puget Sound chinook
(a)(17) Lower Columbia River chinook
(a)(18) Upper Willamette River chinook
(a)(19) Ozette Lake sockeye

Issue 5: Regular Evaluation of Limits on Take Prohibitions

In determining that it is not necessary and advisable to impose take prohibitions on certain programs or activities described here, NMFS is mindful that new information may require a reevaluation of that conclusion at any time. For any of the limits on the take prohibitions described, NMFS will evaluate on a regular basis the effectiveness of the program in protecting and achieving a level salmonid productivity and/or of habitat function consistent with conservation of the listed salmonids. If it is not, NMFS will identify ways in which the program needs to be altered or strengthened. For habitat-related limits on the take prohibitions, changes may be required if the program is not achieving desired habitat functions, or where even with the habitat characteristics and functions originally targeted, habitat is not supporting population productivity levels needed to conserve the ESU.

If the responsible agency does not make changes to respond adequately to the new information, NMFS will publish notification in the **Federal Register** announcing its intention to impose take prohibitions on activities associated with that program. Such an announcement will provide for a comment period of not less than 30 days, after which NMFS will make a final determination whether to extend all ESA section 9 take prohibitions to the activities.

Issue 6: Coordination with United States Fish and Wildlife Service (FWS)

By its terms, this rule applies only to listed salmonids under NMFS' jurisdiction. However, as it evaluates any program against the criteria in this rule to determine whether the program warrants a limitation on take prohibitions, NMFS will coordinate closely with FWS regional staffs.

Permit/ESA Limit on the Take Prohibitions

This limit on the ESA section 9 take prohibitions recognizes that those holding permits under section 10 of the ESA or coming within other exceptions under the ESA are free of the take prohibition so long as they are acting in accord with the permit or applicable law. Examples of activities for which a section 10 permit may be issued are research or land management activities associated with a habitat conservation plan.

Continuity of Scientific Research

This proposed rule would not restrict ongoing scientific research activities affecting listed Oregon Coast coho; PS, LCR and UWR chinook; HCS and CR chum; and Ozette Lake sockeye ESUs for up to 6 months after its effective date, provided that an application for a permit for scientific purposes or to enhance the conservation or survival of the species is received by the Assistant Administrator for Fisheries (AA), NOAA, within 30 days from the effective date of a final rule. The ESA section 9 take prohibitions would extend to these activities upon the AA's rejection of the application as insufficient, upon issuance or denial of a permit, or 6 months from effective date of the final rule, whichever occurs earliest. It is in the interests of salmonid conservation not to disrupt ongoing research and conservation projects, some of which are of long-term duration. This limit on the take prohibitions assures there will be no unnecessary disruption of those activities, yet provides NMFS with tools to halt the activity through denial if it is judged to have unacceptable impacts on a listed ESU. Therefore, NMFS does not find imposition of additional Federal protections in the form of take prohibitions necessary and advisable.

Take Prohibition Limit for Rescue and Salvage Actions

This limit on the take prohibitions relieves certain agency and official personnel or their designees from the take prohibition when they are acting to aid an injured or stranded salmonid, or salvage a dead individual for scientific study. Each agency acting under this ''exception'' is to report the numbers of fish handled and their status, on an annual basis. This limit on the take prohibitions will result in conservation of the listed species by preserving life or furthering our understanding of the species. By the very nature of the circumstances that trigger these actions (the listed fish is injured or stranded and in need of immediate help, or is already dead and may benefit the species if available for scientific study), NMFS concludes that imposition of Federal protections through a take prohibition is not necessary and advisable.

Fishery Management Limit on the Take Prohibitions

NMFS believes that, in many cases, fisheries for non-listed salmonids and resident game fish species will have acceptably small impacts on threatened salmonids to allow for the conservation of those listed salmonids, as long as state fishery management programs are specifically tailored to meet certain criteria. This proposed rule provides a mechanism whereby NMFS may limit application of take prohibitions to fisheries when a state develops an adequate Fishery Management and Evaluation Plan (FMEP). If NMFS finds that the FMEP contains specific management measures that adequately limits take of listed salmonids and otherwise protects the ESU, NMFS may enter into a Memorandum of Agreement (MOA) with the state for implementation of the plan. Where an FMEP and MOA that meet the following criteria are in place, NMFS concludes that problems associated with fishery impacts on listed salmonids will be addressed and that additional Federal protections through imposition of take prohibitions on harvest activities is not necessary and advisable. Therefore, this rule proposes not to apply take prohibitions actions in accord with FMEPs being implemented through an MOA. This proposed limit on the take prohibitions thus encourages states to move quickly to make needed changes in fishery management so that listed ESUs benefit from those improvements and protections as soon as possible.

Process for Developing FMEPs

Prior to determining that any state's new or amended FMEP is sufficient to eliminate the need for added Federal protection, NMFS must find that the plan is effective in addressing the criteria listed here. If NMFS finds that an FMEP meets those criteria, it will then enter into an MOA with the state which will set forth the terms of the FMEP's implementation and the duties of the parties pursuant to the FMEP. A state must confer annually with NMFS on its fishing regulation changes to ensure consistency with an approved FMEP.

NMFS recognizes the importance of providing meaningful opportunities for

public review of FMEPs. Therefore, prior to approving new or amended FMEPs, NMFS will make such plans available for public review and comment for a period of not less than 30 days. Notice of the availability of these plans will be published in the **Federal Register**.

Criteria for Evaluating FMEPs

NMFS will approve an FMEP only if it meets the following criteria, which are designed to minimize and adequately limit take and promote the conservation of all life stages of threatened salmonids. The FMEP must:

(1) Provide a clear statement of the scope of the proposed action. The statement must include a description of the proposed action, a description of the area of impact, a statement of the management objectives and performance indicators for the proposed action, and anticipated effects of the proposed action on management objectives (including recovery goals) for affected populations. This information will provide objectives and indicators by which to assess management strategies, design monitoring and evaluation programs, measure management performance, and coordinate with other resource management actions in the ESU.

(2) Identify populations within affected ESUs, taking into account (A) spatial and temporal distribution; (B) genetic and phenotypic diversity; and (C) other appropriate identifiable unique biological and life history traits, as discussed under Issue 2. Where available data or technology are inadequate to determine the effects of the proposed action on individual populations, plans may identify management units consisting of two or more population units, when the use of such management units is consistent with survival and recovery of the species. In identifying management units, the plan shall describe the reasons for using such units in lieu of population units and describe how such units are defined such that they are consistent with the principles discussed under Issue 2.

(3) Describe the functional status of each ESU or of any population or management unit intended to be managed separately within the ESU, and determine and apply two thresholds, based on natural production: (A) One that describes the level of abundance and function at which the population is considered viable; and (B) a critical threshold, where because of very low population size and/or function, any additional demographic and genetic risks increases the extinction exponentially.

Thresholds may be described differently depending on the parameter for which thresholds are being established. Abundance and productivity thresholds may consist of a single value or a range of values whereas spatial and temporal distribution and genetic diversity thresholds may consist of multiple values, or describe a pattern or distribution of values. For example, a hypothetical abundance threshold might be either defined as 5,000 spawners per year or a range of 4,000-6,000 spawners per year, whereas a temporal distribution threshold might be defined as a pattern of spawning timing occurring from mid-June through August with random variation about that time, and with approximately 30 percent of the spawners entering in June, 50 percent in July and the remaining 20 percent throughout August.

Proposed management actions must recognize the significant differences in risk associated with these two thresholds and respond accordingly in order to minimize the risks to the long-term sustainability of the population(s). Harvest actions impacting populations that are functioning at or above the viable threshold must be designed to maintain the population or management unit at or above that level. For populations shown with a high degree of confidence to be above critical levels but not yet viable, harvest management must not appreciably slow the population's achievement of viable function. Harvest actions impacting populations that are functioning at or below critical threshold must not appreciably increase the genetic and demographic risks facing the population and must be designed to permit the population's achievement of viable function, unless the plan demonstrates that such an action will not appreciably reduce the likelihood of survival and recovery of the ESU as a whole despite any increased risks to the individual population. Thresholds represent a band of functions reflecting the reality that populations fluctuate from year to year because of natural events and variability. The biological analysis required to arrive at viable and critical thresholds will be more or less intensive depending on data availability and changes. After initial management strategies are developed, annual abundance data will be an extremely important indicator of what adjustments need to be made. Then, as monitoring adds to and refines the data regarding functioning of other parameters, these must also be reviewed on a regular basis so that if significant changes have occurred in run timing, phenotypic diversity or other characteristics, the harvest strategy, (and if appropriate, other strategies) will be adjusted to respond to those changes.

(4) Set escapement objectives or maximum exploitation rates for each management unit or population based on its status, and a harvest program that assures not exceeding those rates or objectives. While the term ''exploitation'' may suggest a purposeful intent to use the resource, it is used here as a term of art in fishery management indicating that all fishery-related mortality must be accounted for. In total, the combined exploitation across all fisheries and management units must not appreciably reduce the likelihood of recovery of the ESU. Management of fisheries where artificially propagated fish predominate must not compromise the management objectives for commingled naturally spawned populations (those supported primarily by natural production) by reducing the likelihood that those populations will maintain or attain viable functional status, or by appreciably slowing attainment of viable function.

(5) Display a biologically based rationale demonstrating that the harvest management strategy does not appreciably reduce the likelihood of survival and recovery of the species in the wild. The effects must be assessed over the entire period of time the proposed harvest management strategy would affect the population, including effects reasonably certain to occur after the proposed action ceases.

(6) Include effective monitoring and evaluation programs to assess compliance, effectiveness, and parameter validation. At a minimum, harvest monitoring programs must collect catch and effort data, information on escapements, and information on biological characteristics such as age, fecundity, size and sex data, and migration timing. The complexity and frequency of the monitoring program should be appropriate to the scale and likely effects of the action. Angling effort and harvest rates may be monitored with check stations, creel censuses, random surveys, and catch-card returns. Spawning ground surveys can track trends in spawning success of listed fish and proportion of hatchery-produced fish spawning naturally. Adult fish counts at dams and weirs can provide estimated total numbers of returns, the proportion of listed to nonlisted fish, and abundance trends. Surveys of rearing areas and downstream migrant

traps can provide estimates of production and juvenile abundance trends. Estimates of the number of hatchery-produced salmonids and mortality of listed fish should be monitored during the season and summarized at the end of the season in an annual report available to NMFS and the public.

(7) Provide for evaluating monitoring data and making any needed revisions of assumptions, management strategies, or objectives. The FMEP must describe the conditions under which revision will be made and the processes for accomplishing those revisions.

(8) Provide for effective enforcement and education. Coordination among involved jurisdictions is an important element in ensuring regulatory effectiveness and coverage.

(9) Be consistent with plans and conditions set within any Federal Court proceeding with continuing jurisdiction over tribal harvest allocations. Agreements adopted within the *United States* v. *Washington* proceeding, such as the Puget Sound Management Plan (originally approved by the court in 1977; most recent amendment approved by the court in *United States* v. *Washington*, 626 F. Supp. 1405, 1527 (1985, W.D. Wash.) mandate that harvest and artificial production management actions are agreed to and coordinated between the State of Washington and the Western Washington treaty tribes. Where joint agreement is required, such plans will fall under the provisions of paragraphs (b)(6)(i)-(iv) of section 223.203 contained in this proposed rule.

Artificial Propagation Limit on the Take Prohibitions

NMFS believes that in some cases it may not be necessary and advisable to prohibit take with respect to artificial production programs, including use of listed salmonids as hatchery broodstock, under specific circumstances. This limit on the take prohibitions proposes a mechanism whereby state or Federal hatchery managers may obtain assurance that a hatchery and genetic management program is adequate for protection and conservation of a threatened salmonid ESU. The state or Federal agency would develop a Hatchery and Genetic Management Plan (HGMP) containing specific management measures that will minimize and adequately limit impacts on listed salmonids and promote the conservation of the listed ESU, and then enter into an MOA with NMFS to ensure adequate implementation of the HGMP. NMFS believes that with an adequate HGMP and an MOA in place, additional Federal protection through imposition of take prohibitions on artificial propagation activities would not be necessary and advisable for conservation of the threatened salmonids.

Process for Developing Hatchery and Genetic Management Plans

NMFS will evaluate the effectiveness of state or Federal HGMPs in addressing the criteria here. If the HGMP does so adequately, NMFS will then enter into an MOA with the state or complete an ESA section 7 consultation with a Federal entity, which will set forth the duties of the parties pursuant to the plan. This proposed rule provides a mechanism whereby NMFS may limit application of take prohibitions to broodstock collection.

NMFS recognizes the importance of providing meaningful opportunities for public review of draft HGMPs. Therefore, prior to approving new or amended HGMPs, NMFS will make such plans available for public review and comment for a period of not less than 30 days. Notice of the availability of such draft plans will be published in the **Federal Register**.

Criteria for Evaluating Hatchery and Genetic Management Plans

NMFS will evaluate salmonid HGMPs on the basis of criteria that are designed to minimize take and adequately limit take and promote the conservation of the listed species. The criteria by which draft HGMPs will be evaluated include the following:

(1) *Goals and Objectives for the Propagation Program.* Each hatchery program must have clearly stated goals, performance objectives, and performance indicators that indicate the purpose of the program, its intended results, and measurements of its performance in meeting those results. Goals should address whether the program is intended to meet conservation objectives, contributing to the ultimate sustainability of natural spawning populations, and/or intended to augment tribal, recreational, or commercial fisheries. Objectives should enumerate the results desired from the program against which its success or failure can be monitored.

(2) *Maintenance of Viable Populations.* Listed salmonids may be taken for broodstock purposes only if (A) the donor population is currently at or above viable thresholds and the collection will not reduce the likelihood that the population remains viable; (B) the donor population is not currently viable but the sole current objective of the collection program is to enhance the propagation or survival of the listed ESU; or (C) the donor population is shown with a high degree of confidence to be above critical threshold although not yet viable, and the collection will not appreciably slow the attainment of viable population status.

(3) *Prioritization of broodstock collection programs.* Broodstock collection programs of listed salmonids shall be prioritized on the following basis depending on health, abundance and trends in the donor population: (A) for captive brood or supplementation of the local indigenous population; (B) for supplementation and restoration of similar, at-risk, natural populations within the same ESU or for reintroduction to underseeded habitat; and (C) production to sustain tribal, recreational and commercial fisheries consistent with recovery and maintenance of naturally-spawned populations. The primary purpose of broodstock collection programs must be to reestablish local indigenous populations and to supplement and restore existing populations. After the species' conservation needs are met, and when consistent with survival and recovery of the species, broodstock collection programs may be authorized by NMFS for secondary purposes, such as to sustain tribal, recreational and commercial fisheries.

(4) *Operational Protocols.* An HGMP must include comprehensive protocols pertaining to fish health; broodstock collection; broodstock mating; incubation, rearing and release of juveniles; disposition of hatchery adults; and catastrophic risk management.

(5) *Genetic and Ecological Effects.* An HGMP will be evaluated based on best available information to assure the program avoids or minimizes any deleterious genetic or ecological effects on natural populations, including disease transfer, competition, predation, and genetic introgression caused by straying of hatchery fish.

(6) *Adequacy of Existing Fishery Management Programs and Regulations.* An HGMP shall describe interrelationships and interdependencies with fisheries management. The combination of artificial propagation programs and harvest management must be designed to provide as many benefits and as few biological risks as possible for the listed species. HGMPs for programs whose purpose is to sustain fisheries must not compromise the ability of FMEPs or other management plans to achieve management objectives for associated listed populations.

(7) *Adequacy of Hatchery Facilities.* Adequate artificial propagation facilities must exist to properly rear progeny of listed broodstock to maintain population health, maintain population diversity, and to avoid hatchery-influenced selection or domestication.

(8) *Availability of Effective Monitoring Efforts.* Adequate monitoring and evaluation must exist to detect and evaluate the success of the hatchery program and any risks to or impairment of recovery of, the listed ESU.

(9) *Consistency with Court Mandates.* An HGMP must be consistent with plans and conditions set within any Federal Court proceeding with continuing jurisdiction over tribal harvest allocations. Agreements adopted within the *United States* v. *Washington* proceeding, such as the Puget Sound Management Plan (originally approved by the court in 1977; most recent amendment approved by the court in *United States* v. *Washington*, 626 F. Supp. 1405, 1527 (1985, W.D. Wash.) mandate that harvest and artificial production management actions are agreed to and coordinated between the State of Washington and the Western Washington treaty tribes. Where joint agreement is required, such plans will fall under the provisions of paragraphs (b)(6)(i)-(iv) of section 223.203 of this proposed rule.

Take of Progeny Resulting from Hatchery/Naturally-Spawned Crosses

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 listed species that are propagated artificially are considered part of the listed species and are protected under the ESA.'' According to the interim policy, the progeny of such hatchery/naturally spawned crosses or naturally spawned-naturally spawned crosses would also be listed.

In its listing decisions for the seven ESUs subject to this notification, NMFS determined that it was not necessary to consider the artificially propagated progeny of intentional hatchery/naturally spawned and naturally spawned/naturally spawned crosses as listed (except in cases where NMFS has listed the hatchery population as well). NMFS believes it desirable to incorporate naturally spawned fish into the hatchery populations to ensure that their genetic and life history characteristics do not diverge significantly from the naturally spawned populations. Prior to any intentional use of threatened salmonids for hatchery broodstock, an approved HGMP must be in place to ensure that native, naturally spawned populations are conserved.

Limits on the Take Prohibitions for Joint Tribal/State Plans Developed within United States v. Washington or United States v. Oregon

Concurrent with this proposed rule, NMFS proposes a limit on the take prohibitions for actions in accord with any tribal resource management plan that the Secretary has determined will not appreciably reduce the likelihood of survival and recovery of a threatened ESU. That proposal is published elsewhere in the Proposed Rules section of this **Federal Register** issue. Non-tribal salmonid management within the Puget Sound and Columbia River areas is profoundly influenced by the tribal rights of numerous Indian tribes in the Northwest and must be responsive to the court proceedings interpreting and/or defining those tribal interests. Various orders of the *United States* v. *Washington* court, such as the Puget Sound Salmon Management Plan (originally approved by the court in 1977; most recent amendment approved by the court in *United States* v. *Washington*, 626 F. Supp. 1405, 1527 (1985, W.D. Wash.) mandate that many aspects of fishery management, including, but not limited to, harvest and artificial production actions be agreed to and coordinated between the State of Washington and the Western Washington Treaty tribes. The State of Washington, affected tribes, other interests, and affected Federal agencies are all working toward an integrated set of management strategies and strictures that will respond to the biological, legal and practical realities of salmonid issues in Puget Sound, including tribal rights and NMFS' ESA responsibilities to conserve listed species. Similar principles are equally applicable within the Columbia River basin where the States of Oregon, Washington, Idaho, and five treaty tribes work within the framework and jurisdiction of *United States* v. *Oregon.*

NMFS, therefore, proposes this limit on the take prohibitions to accommodate any resource management plan developed jointly by the States and the Tribes (joint plan) within the continuing jursidiction of *United States* v. *Washington*, or of *United States* v. *Oregon,* the on-going Federal court proceedings to enforce and implement reserved treaty fishing rights. Such a plan would be developed and reviewed under the government-to-government processes of the general tribal exception (including technical assistance from NMFS in evaluating impacts on listed salmonids). Before the take prohibitions would be determined not to apply to a joint plan, the Secretary must determine that implemenation and enforcement of the plan will not appreciably reduce the likelihood of survival and recovery of the species. Before making that determination for joint fishery management or hatchery and genetic management plans the Secretary must solicit and consider public comment on how any fishery management plan addresses the criteria in § 223.203(b)(4) of this proposed rule, or how any hatchery and genetic management plan addresses the criteria in § 223.203(b)(5) of this proposed rule. The Secretary shall publish notice of any determination regarding a joint plan, with a discussion of the biological analysis underlying that determination, in the **Federal Register**.

Limits on the Take Prohibitions for Scientific Research

In carrying out their responsibilities, state fishery management agencies in Washington and Oregon conduct or permit a wide range of scientific research activities on various fisheries, including monitoring and other studies on salmonids which occur in the seven threatened salmonid ESUs considered in this proposed rule. NMFS finds these activities vital for improving our understanding of the status and risks facing salmonids and other listed species of anadromous fish that occur in overlapping habitat, and provide critical information for assessing the effectiveness of current and future management practices. In general, NMFS concludes such activities will help to conserve the listed species by furthering our understanding of the species' life history and biological requirements, and that state biologists and cooperating agencies carefully consider the benefits and risks of proposed research before approving or undertaking such projects. NMFS concludes that it is not necessary or advisable to impose additional protections on such research through imposition of Federal take prohibitions. Therefore, in this document, NMFS proposes not to apply take prohibitions to scientific research activities under the following circumstances.

Research activities that involve planned sacrifice or manipulation of, or will necessarily result in injury to or death of, listed salmonids come within this exception only if the state submits an annual report listing all scientific research activities involving such activities planned for the coming year,

for NMFS' review and approval. Such reports shall contain (1) an estimate of the total take anticipated from such research; (2) a description of study designs, including a justification for taking the species; (3) a description of the techniques to be used; and (4) a point of contact. Research involving planned sacrifice or manipulation of, or which will necessarily result in injury to or death of listed salmonids must be conducted by employees or contractors of the state fishery management agency, or as part of a coordinated monitoring and research program overseen by that agency. Any research using electrofishing gear in waters known, or expected to contain, listed salmonids, is within this exception only if it complies with ''Guidelines for Electrofishing Waters Containing Salmonids Listed Under the Endangered Species Act'' (NMFS, 1998). Otherwise, electrofishing research requires an ESA section 10 research permit from NMFS prior to commencing operations. NMFS welcomes comment on these guidelines, which are available (see **ADDRESSES**), during the comment period for this proposed rule.

The state must annually provide NMFS with the results of scientific research activities that involve directed take of listed salmonids, including a report of the amount of direct take resulting from the studies and a summary of the results of such studies.

A state may conduct and may authorize non-state parties to conduct research activities that may result in incidental take of listed salmonids under the following conditions. The state shall submit to NMFS annually, for its review and approval, a report listing all scientific research activities permitted that may incidentally take listed salmonids during the coming year. In that annual report, the state must also report the amount of incidental take of listed salmonids occurring in the previous year's scientific research activities, and provide a summary of the results of such research. Interested parties may request a copy of these annual reports from NMFS (see **ADDRESSES**).

Habitat Restoration Limits on the Take Prohibitions

NMFS considers a ''habitat restoration activity'' to be an activity whose primary purpose is to restore natural aquatic or riparian habitat processes or conditions; it is an activity which would not be undertaken but for its restoration purpose. NMFS does not consider herbicide applications or artificial bank stabilization to be restoration activity.

Certain habitat restoration activities are likely to contribute to conserving listed salmonids without significant risks, and NMFS concludes that it is not necessary and advisable to impose take prohibitions on those activities when conducted in accordance with appropriate standards and guidelines. Projects planned and carried out based on at least a watershed-scale analysis and conservation plan, and, where practicable, a sub-basin or basin-scale analysis and plan, are likely to be the most beneficial. NMFS strongly encourages local efforts to conduct watershed assessments to identify what problems are impairing watershed function, and to plan for watershed restoration or conservation in reliance on that assessment. Without the overview a watershed-level approach provides, habitat efforts are likely to focus on ''fixes'' that may prove short-lived, or even detrimental, because the underlying processes that are causing a particular problem have not been addressed.

This proposed rule, therefore, provides that ESA section 9(a) take prohibitions will not apply to habitat restoration activities found to be part of, and conducted pursuant to, a state-approved watershed conservation plan with which NMFS concurs. The state in which the activity occurs must determine in writing whether a watershed plan has been formulated in accordance with NMFS-approved state watershed conservation plan guidelines, and forward any positive finding for NMFS' concurrence. NMFS will work with interested states in developing guidelines that meet the criteria and standards set forth here. If NMFS finds they meet those criteria and standards, NMFS will then certify this determination in writing to the state. Such a plan will contain adequate safeguards such that no additional Federal protections through imposition of take prohibitions on actions in accord with the plan is necessary and advisable for conservation of the listed salmonids.

While criteria and plans are being developed, this proposed rule would not apply the take prohibitions to several habitat restoration activities if carried out in accord with the conditions described here, and with any required state or Federal reviews or permits. Until watershed conservation plans formulated in accord with NMFS-approved state watershed conservation plan guidelines are in place, but for no longer than 2 years, ESA section 9 take prohibitions will not apply to the following restoration activities when conducted in accord with the listed conditions and guidance. More complex restoration activities such as habitat construction projects or channel alterations require project by project technical review at least until watershed planning is complete.

Applicable state guidance includes the *Oregon Road/Stream Crossing Restoration Guide: Spring 1999*, selected portions (cited here) of the *Oregon Aquatic Habitat Restoration and Enhancement Guide* (1999); the Washington Department of Fish and Wildlife, (WDFW) *Habitat and Lands Environmental Engineering Division's Fish Passage Design at Road Culverts*, March 3, 1999; Washington Administrative Code rules for Hydraulic Project Approval; and Washington's *Integrated Streambank Protection Guidelines*, June, 1998. Under those conditions and where consistent with any other state or Federal laws and regulations, NMFS proposes not to apply take prohibitions to the following habitat restoration activities:

1. *Riparian zone planting or fencing*. Conditions: no in-water work; no sediment runoff to stream; native vegetation only; fence placement consistent with standards in the *Oregon Aquatic Habitat Restoration and Enhancement Guide* (1999).

2. *Livestock water development off-channel*. Conditions: no modification of bed or banks; no in-water structures except minimum necessary to provide source for off-channel watering; no sediment runoff to stream; diversion adequately screened; diversion in accord with state law and has no more than de minimus impacts on flows that are critical to fish; diversion quantity shall never exceed 10 percent of current flow at any moment, nor reduce any established instream flows.

3. *Large wood (LW) or boulder placement*. Conditions: does not apply to LW placement associated with basal area credit in Oregon. No heavy equipment allowed in stream; work limited to any state in-water work season guidelines established for fish protection, or if there are none, limited to summer low-flow season with no work from the start of adult migration through the end of juvenile outmigration. Wood placement projects should rely on the size of wood for stability and may not use permanent anchoring including rebar or cabling (these would require ESA section 7 consultation or an ESA section 10 permit)(biodegradable manila/sisal rope may be used for temporary stabilization). Wood length should be at least two times the bankfull stream width (1.5 times the bankfull width for wood with rootwad attached) and meet diameter requirements and stream size

and slope requirements outlined in *A Guide to Placing Large Wood in Streams*, Oregon Department of Forestry and Department of Fish and Wildlife, May, 1995. LW placement must be either associated with an intact, well-vegetated riparian area which is not yet mature enough to provide LW; or accompanied by a riparian revegetation project adjacent or upstream that will provide LW when mature. Placement of boulders only where human activity has created a bedrock stream situation not natural to that stream system, where the stream segment would normally be expected to have boulders, and where lack of boulder structure are major contributing factors to the decline of the stream fisheries in the reach. Boulder placement projects within this exception must rely on size of boulder for stability, not on any artificial cabling or other devices. See applicable guidance in *Oregon Aquatic Habitat Restoration and Enhancement Guide* (1999).

4. *Correcting road/stream crossings, including culverts, to allow or improve fish passage. See* Washington Department of Fish and Wildlife's (WDFW) *Fish Passage Design at Road Culverts*, March 3, 1999; *Oregon Road/Stream Crossing Restoration Guide: Spring 1999*.

5. *Repair, maintenance, upgrade or decommissioning of roads in danger of failure*. All work to be done in dry season; prevent any sediment input into streams.

6. *Salmonid carcass placement*. Carcass placement should be considered only where numbers of spawners are substantially below historic levels. Follow applicable guidelines in *Oregon Aquatic Habitat Restoration and Enhancement Guide* (1999), including assuring that the proposed source of hatchery carcasses is from the same watershed or river basin as the proposed placement location. To prevent introduction of diseases from hatcheries, such as Bacterial Kidney Disease, carcasses must be approved for placement by a state fisheries fish pathologist.

These short term ''exceptions'' describe habitat restoration activities that are likely to promote conservation of listed salmonids with relatively small risk negative impacts. If conducted in accord with the limitations described earlier, NMFS concludes it is not necessary and advisable to provide additional Federal protections through imposition of take prohibitions on these restoration actions. Thus, these habitat restoration activities can proceed over the next 2 years without the need for ESA section 10 permit coverage. Before undertaking other habitat restoration activities the project coordinator should contact NMFS to determine whether the project can be conducted in such a way as to avoid take. If not, NMFS will recommend that a section 10 incidental take permit be obtained before proceeding. If the project involves action, permitting or funding by a Federal agency, ESA coverage would occur through section 7 consultation.

After a watershed conservation plan has been approved, only activities conducted pursuant to the plan fall outside the scope of the ESA section 9 take prohibitions. If no watershed conservation plan has been approved by 2 years after publication of the final rule in the **Federal Register**, then section 9 take prohibitions will apply to individual habitat restoration activities just as to all other habitat-affecting activities.

Criteria for Evaluating Watershed Conservation Plan Guidelines

NMFS will evaluate state watershed conservation plan guidelines based upon the standards defined here, which include criteria derived from those used for evaluating applications for incidental take permits, found at § 222.307(c) of this chapter. Guidelines must result in plans that:

(1) Consider the status of the affected species and populations.

(2) Design and sequence restoration activities based upon information obtained from an overall watershed assessment.

(3) Prioritize restoration activities based on information from watershed assessment.

(4) Evaluate the potential severity of direct, indirect and cumulative impacts on the species and habitat as a result of the activities the plan would allow.

(5) Provide for effective monitoring. This criterion requires that the effectiveness of activities designed to improve natural watershed function will be evaluated through appropriate monitoring and that monitoring data will be analyzed to help develop adaptive management strategies. Successful monitoring requires identification of the problem, identification of the appropriate solution to the problem, and determination of the effectiveness of the solution over a period of time in increasing productivity of the listed salmonids.

(6) Use best available technology. Since the language of part § 222 of this chapter contemplates activities unrelated to habitat restoration, it applies ''best available technology'' only to minimizing and mitigating incidental effects. For this application, NMFS makes the logical extension of also applying ''best available technology'' to the restoration activities per se. Guidelines must ensure that plans will represent the most recent developments in the science and technology of habitat restoration, and use adaptive management to incorporate new science and technology into plans as they develop, and where appropriate, provide for project specific review by disciplines such as hydrology, geomorphology, etc.

(7) Assure that any taking resulting from implementation will be incidental.

(8) Require the state, local government, or other responsible entity to monitor, minimize and mitigate the impacts of any such taking to the maximum extent practicable.

(9) Will not result in long-term adverse impacts. Implementation may cause some short-term adverse impacts, and plans must evaluate the ability of affected ESUs to withstand those impacts. Guidelines and plans must assure that habitat restoration activities will be consistent with the restoration and persistence of natural habitat forming processes.

(10) Assure that the safeguards required in watershed conservation plans will be funded and implemented.

NMFS recognizes the importance of providing meaningful opportunities for public review of watershed conservation plan guidelines. Therefore, prior to certifying such guidelines, NMFS will make the guidelines available for public review and comment for a period of not less than 30 days. Notice of the availability of such draft guidelines will be published in the **Federal Register**. Notice will also be sent to parties expressing an interest in these guidelines. Parties interested in receiving notification should contact NMFS (see **ADDRESSES**).

Water Diversion Screening Limit on the Take Prohibitions

A widely recognized cause of mortality among anadromous fish is operation of water diversions without adequate screening. Juveniles may be sucked or attracted into diversion ditches where they later die from a variety of causes, including stranding. Adult and juvenile migration may be impaired by diversion structures, including push-up dams. Juveniles are often injured and killed through entrainment in pumping facilities or impingement on inadequate screens, where water pressure and mechanical forces are often lethal.

State laws and Federal programs have long recognized these problems in

varying ways, and encouraged or required adequate screening of diversion ditches, structures, and pumps to prevent much of the anadromous fish loss attributable to this cause. Nonetheless, large numbers of diversions are not adequately screened and remain a threat, particularly to juvenile salmonids, and elimination of that source of injury or death is vital to conservation of listed salmonids.

Therefore, this proposed rule encourages all diverters to move quickly to provide adequate screening or other protections for their diversions, by not applying take prohibitions to any diversion screened in accord with NMFS' Juvenile Fish Screening Criteria, Northwest Region, Revised February 16, 1995, with Addendum of May 9, 1996 (available by contacting **ADDRESSES**). Compliance with these criteria will address the problems associated with water diversions lacking adequate screening. If a diversion is screened, operated and maintained consistent with those NMFS criteria, NMFS concludes that adequate safeguards will be in place such that no additional Federal protection (with respect to method of diversion) through imposition of take prohibitions is necessary and advisable for conservation of listed salmonids. Written acknowledgment from NMFS engineering staff is needed to establish that screens are in compliance with the criteria.

The proposed take prohibitions would not apply to physical impacts on listed fish due to entrainment or similar impacts of the act of diverting, so long as the diversion has been screened according to NMFS criteria and is being properly maintained. The take prohibitions would apply to take that may be caused by instream flow reductions associated with operation of the water diversion facility, and impacts caused by installation of the water diversion facility, such as dewatering/bypass of the stream or in-water work. Such take remains subject to the prohibitions of § 223.203(a).

Routine Road Maintenance Limit on the Take Prohibitions

The Oregon Department of Transportation (ODOT) is responsible for the extensive existing transportation infrastructure represented by the Oregon's state highway system. ODOT maintenance and environmental staff have worked with NMFS for more than a year toward performing routine road maintenance activities within the constraints of the ESA and the Clean Water Act, while carrying out the agency's fundamental mission to provide a safe and effective transportation system. That work has resulted in a program that greatly improves protections for listed salmonids with respect to the range of routine maintenance activities, minimizing their impacts on receiving streams. The Association of Oregon Counties and the City of Portland participated in some of the later discussions of needed measures and processes. ODOT's program includes its Maintenance of Water Quality and Habitat Guide dated June, 1999 (Guide) and a number of supporting policies and practices, including a strong training program, accountability mechanisms, close regional working relationships with Oregon Department of Fish and Wildlife (ODFW) biologists, two ODFW staff whose time is fully dedicated to work with ODOT, a biologist dedicated full time to work with NMFS on transportation issues, and several ongoing research projects.

The Director of ODOT has committed that ODOT will implement the Guide, including training, documentation and accountability features that are described in the introduction to the document (letter from Grace Crunican to Will Stelle, dated June 30, 1999). The guide governs the manner in which crews should proceed on a wide variety of routine maintenance activities, including surface and shoulder work, ditch, bridge, and culvert maintenance, snow and ice removal, emergency maintenance, mowing, brush control and other vegetation management. The program directs activity toward favorable weather conditions, increases attention to erosion control, prescribes appropriate equipment use, governs disposal of vegetation or sediment removed from roadsides or ditches, and includes other improved protections for listed salmonids, as well as improving habitat conditions generally. Routine road maintenance conducted in compliance with the ODOT program will adequately address the problems potentially associated with such activity. In other words, the Guide provides adequate safeguards for listed salmonids. Furthermore, extension of the take prohibitions to these activities would not provide meaningful, increased protection for listed salmonids. In sum, NMFS does not find it necessary and advisable to apply take prohibitions to routine road maintenance work performed consistent with the Guide. The Guide governs only routine maintenance activities of ODOT staff. Other activities, including new construction, major replacements, or activity for which a U.S. Army Corps of Engineers (COE) permit is required, are not covered by the routine maintenance program and therefore would be subject to the take prohibitions.

NMFS realizes that in many circumstances the Guide includes language that could compromise the protections otherwise offered, through phrases such as ''where possible'', ''where feasible'' or ''where practicable.'' Although, as a general rule, such language creates an unacceptable level of ambiguity or uncertainty for a program being recognized within the ESA, a variety of circumstances constrain and limit that uncertainty in the case of ODOT's routine maintenance program. Foremost is that ODOT intends these discretionary phrases to be exercised only where a physical, safety, weather, equipment or other hard constraint makes it impossible to follow a Best Management Practice (BMP) to the letter. ODOT has explained this in the Guide, making clear that the discretionary language is not included to create flexibility for the convenience of the crew or for ease of operation. ODOT is striving in its training program to have all crews understand that point, and to provide examples of appropriate and inappropriate application of those discretionary phrases. As an example of appropriate use, the Guide states that ODOT will ''where feasible, schedule sweeping during damp weather, to minimize dust production.'' ODOT crews strive to follow that. However, debris on the road at other times may require that ODOT sweep a road regardless of road moisture, to ensure a safe surface. ODOT would then proceed with sweeping as necessary, using other applicable minimization and avoidance practices.

Further, ODOT crews undergo extensive and regular training, and are increasingly focused on environmental considerations and compliance as a core agency value and consideration. ODOT is testing new ideas for enhancing feedback from crews to managers and policy staff. One proposal establishes environmental leaders on each crew who then meet regularly to address successes and failures. Information from that group would then be fed into a monthly regional meeting for identification of needed adjustments, and then on to quarterly management reviews. While this system is not in place, it demonstrates ODOT's determination to find and use practical feedback mechanisms to enhance the routine maintenance program as well as other ODOT programs.

In sensitive resource areas, the possibilities of exercising discretionary

flexibility are further constrained by a new tool that has been implemented in southern Oregon, will shortly be in place in the north coast region, and completed throughout Oregon in 2002. The agency is working to prepare detailed maps identifying any known sensitive resource sites that occur within ODOT rights of way. ODOT is mapping dominant land cover, functional overstory values, late successional stage, riparian management areas, presence of contiguous riparian areas, salmonid presence, spawning, rearing, offchannel areas, tributaries, wetlands, and other resource issues. This mapping does not delineate boundaries or provide presence or absence of species, but rather inventories known resources within ODOT'S rights of way.

A resource map and a restricted activity map are being produced for each road, by mile point and global position system coordinate. The restricted activity maps are coordinated with ODOT maintenance staff and will allow ODOT staff the knowledge to adjust their activities based on resource information. 'No restriction' areas indicate that no known resource of concern has been identified in the area, and routine maintenance can occur using the Guide. A 'Caution' value indicates the known presence of one or more resources in the general work area, and maintenance crews should increase their awareness of their activities, perhaps contacting region environmental staff. The district Integrated Pest/Vegetation Management Plan and the Guide will direct activities. The 'Restricted value' indicates that a resource of concern is known to be present within the right of way and consultation with technical staff needs to occur prior to any work or ground disturbing activity.

With a full-time staff person at NMFS dedicated to coordination and communication with ODOT staff on a regular basis and participation in monthly and quarterly review meetings, NMFS is assured of regular feedback on how the program is operating. That feedback will provide information on the frequency and nature of any deviations from the practices specified in the Guide. If at some time in the future that dedicated staff position is no longer available, then NMFS and ODOT will have to find another means of assuring that feedback or amend the program appropriately to keep it within the exception.

Finally, through annual reporting of external complaints and their outcomes, ODOT will identify needed ''modifications of, or improvements to'' any of the minimization/avoidance measures and has committed to making changes to the measures as necessary. Likewise, ODOT will incorporate changes reflecting new scientific information and new techniques and materials.

ODOT will notify NMFS of any changes to the ODOT guidance, and before NMFS determines that the take prohibitions should not be extended to these activities, NMFS will publish notification in the **Federal Register** providing a comment period of not less than 30 days for public review and comment on the proposed changes. If at any time NMFS determines that compliance problems or new information cause the ODOT program to no longer provide sufficient protection for threatened salmonids, NMFS shall notify ODOT. If ODOT does not effectively correct the matter within a mutually determined time period, NMFS shall notify ODOT that its routine road maintenance program is subject to the take prohibitions.

While ODOT implements an integrated vegetation management program which assures that herbicide or pesticide spraying will not occur in areas of sensitive natural resources, including streams, NMFS is unable to conclude at this time that the measures in ODOT's Guide governing herbicide or pesticide spraying (MMS #131) are sufficiently protective of listed salmonids to warrant not applying the take prohibitions of this proposed rule to that activity. This is in part because of the large number of herbicide and pesticide formulations ODOT may employ, and the legitimate concerns about effects of many of these chemicals on aquatic species, and specifically on anadromous fish at various life stages. The fact that NMFS does propose to apply take prohibitions to spraying at this time does not indicate that NMFS has determined that any particular ODOT pesticide spraying activities constitute harm to salmonids; rather, that there is not sufficient evidence at this time to be sure the risk of harm is low. NMFS intends to continue working with ODOT on the issues surrounding herbicide and pesticide use. ODOT is currently conducting research on whether chemicals it applies reach streams under worst-case scenarios.

For similar reasons, the take prohibitions would apply to dust abatement measures in the Guide. ODOT routine maintenance seldom engages in dust abatement, and when it does uses only water and hence is not risk of harming salmonids. There is insufficient precision in the Guide as to chemical makeup of palliatives, specific areas of use, rates of application, and possible contaminants for NMFS to be sure the risk of harm would be acceptably low should any county or city that does significant dust abatement seek to come within this exception. Therefore, a county or city would have to provide those additional details and commit to appropriate limits in an MOA before dust abatement could be considered as within this limit on take prohibitions. NMFS believes that other than for herbicide and pesticide spraying and dust control, activity in compliance with the ODOT guidance and program would not further degrade or otherwise restrict attainment of properly functioning conditions. With respect to routine road maintenance activities in Oregon, the program limits impacts on listed salmonids and their habitat to an extent that makes additional Federal protections unnecessary for the conservation of listed salmonids. Therefore, in this proposed rule NMFS does not propose to apply take prohibitions on routine road maintenance activities (other than herbicide and pesticide spraying, or dust abatement) so long as the activity is covered by, and conducted in accord with, ODOT's *Maintenance Management System Water Quality and Habitat Guide* (June, 1999). ODOT will continue to obtain permits from the COE and/or Oregon Division of State Lands for any in-stream work normally requiring those permits, and COE section 7 consultation requirements on permit issuance is not affected by this limit on the take prohibitions.

ODOT has committed to review the Guide and revise as necessary at least every 5 years. ODOT is actively reviewing potential impacts or new technologies related to many issues. For instance, results from an earlier technical team evaluation of impacts of de-icing mechanisms on aquatic resources is included as an appendix to the Guide. That group has been reconvened (with NMFS as a member) and is revisiting adherence to the specifications, as well as evaluating extensive research on CMA (calcium-magnesium acetate). Initial research indicates that CMA is not getting to the water column, but the team will be following up. ODOT has also been doing roadside snow sampling to determine whether any typical road-side pollutant is present on road sand, and thus far has not identified any measurable concentrations.

ODOT has several other interagency teams working toward improving practices or further defining specific issues related to ditches, culverts, or emergency circumstances. It is also

continuing research on how to best recycle or otherwise appropriately dispose of maintenance decant, sediment, or sweepings. Any of the above may result in improved practices, and where necessary, revision of the Guide.

At any time ODOT revises part of the 1999 Guide, ODOT will need to provide the desired revision to NMFS for review and approval. NMFS will make draft changes available for public review and comment for a period of not less than 30 days. Notice of the availability of such draft changes will be published in the **Federal Register**. Notice will also be sent to parties expressing an interest in the Guide. Parties interested in receiving notification should contact NMFS (see **ADDRESSES**).

Some Oregon city and county governments have indicated interest in using the ODOT guidance to be sure that their routine road maintenance activities are protective of salmonids. The fact that ODOT has an extensive and ongoing training program for all maintenance employees and has committed to report on an annual basis details of program implementation is fundamental to NMFS' belief that the program is adequate. Hence, any Oregon city or county desiring that its routine road maintenance activities come under this ''exception'' must not only commit in writing to apply the measures in the Guide, but also must first enter a MOA with NMFS detailing how it will assure adequate training, tracking, and reporting, including how it will control and narrow the circumstances in which a practice will not be followed because it is not ''feasible,'' ''practical,'' or ''possible.''

Portland Parks Integrated Pest Management Limit on the Take Prohibitions

The City of Portland, Oregon, Parks and Recreation Department (PP&R) operates a diverse system of city parks representing a full spectrum from intensively managed recreation, sport, golf, or garden sites to largely natural, unmanaged parks, including the several thousand acre, wooded, Forest Park. PP&R has been operating and refining an integrated pest management program for 10 years, with a goal of reducing the extent of its use of herbicides and pesticides in park maintenance. The program's ''decision tree'' place first priority on prevention of pests (weeds, insects, disease) through policy, planning, and avoidance measures (design and plant selection). Second priority is on cultural and mechanical practices, trapping, and biological controls. Use of biological products, and finally of chemical products, is to be considered last. PP&R's overall program affects only a small proportion of the land base and waterways within Portland, and serves to minimize any impacts on listed salmonids from chemical applications associated with that specific, limited land base. NMFS believes it would contribute to conservation of listed salmonids if jurisdictions would broadly adopt a similar approach to eliminating and limiting chemical use in their parks and in other governmental functions. As a result of this program, the City has phased out regularly scheduled treatments such as turf spraying to control broadleaf weeds. This has reduced total use of chemical to control broadleaf weeds to less than 15 percent of its former level.

Decisions to use pesticides are not made lightly and require attention to public notification, mixing, cleaning and record keeping. Use of pesticides is no longer a ''least hassle'' kind of option. City personnel report that pesticide use is avoided by maintenance crews unless there are no other workable options.

Crews cease application when winds will cause spray drift beyond the target site. Spot spraying or brushing of herbicides is frequently chosen.

PP&R has recently developed special policies to provide extra protections near waterways and wetlands, including a 25– foot (7.5 m) buffer zone in which pesticide use is limited to Glyphosphate products, Garlon 3A, Surfactant R–11, Napropamide, Cutrine Plus, and Aquashade. Within this buffer applications are spot applied with a hand wand from a backpack sprayer, which utilizes low pressure spray to minimize drift. Under certain circumstances broadcast spraying, which also uses the low pressure hand-wand spraying will be conducted. Application rates of chemicals used range from 9 percent to 100 percent of label allowances, depending on the identified task.

After careful analysis of PP&R's integrated program for pest management, NMFS concludes that it addresses potential impacts and provides adequate protection for listed salmonids with respect to the limited use the program may make of the listed chemicals. Therefore, NMFS does not find it necessary and advisable to apply additional Federal protections in the form of take prohibitions to PP&R activities conducted under City of Portland, Oregon's Parks and Recreation Department's (PP&R) Pest Management Program (March 1997), including its Waterways Pest Management Policy dated April 4, 1999. In addition, NMFS concludes that take prohibitions would not meaningfully increase the level of protection provided for listed salmonids. NMFS, therefore, does not propose to apply the take prohibitions of this proposed rule to activities within the PP&R program.

Confining the limit on take prohibitions to a specified list of chemicals does not indicate that NMFS has determined that other chemicals PP&R may employ necessarily will cause harm to salmonids in the manner used. NMFS intends to continue working with PP&R on the issues surrounding use of any other herbicide or pesticide.

PP&R's program includes a variety of monitoring commitments and a yearly assessment with NMFS of results, progress, and any problems. If at any time monitoring information, new scientific studies, or new techniques cause PP&R to amend its program or to cause PP&R and NMFS to wish to change the list of chemicals falling outside the scope of the take prohibitions, NMFS will publish a document in the **Federal Register** announcing the availability of the proposed changes for public review and comment. Such a notification will provide for a comment period of not less than 30 days, after which NMFS will make a final determination whether the changes will conserve listed salmonids. PP&R has been seeking to decrease the extent of its intensively managed riparian areas. NMFS commends that effort, while recognizing that PP&R is constrained by recreational, aesthetic, safety and other responsibilities. This limit on the take prohibitions does not include PP&R's initial planning determinations about the extent of riparian vegetative buffer provided; that question is separable from the integrated pest management approach taken to achieve the conditions planned. This limit focuses on the methods PP&R employs to assure that once it has identified a particular plant or animal as a pest, its control methods are as protective of natural processes, water quality, and listed species as possible.

Limit on Take Prohibitions for New Urban Density Development

As a general matter, significant new urban scale developments have the potential to degrade salmonid habitat and to injure or kill salmonids through a variety of impacts. NMFS believes that with appropriate safeguards, new development can be specifically tailored to minimize impacts on listed salmonids to an extent that makes additional Federal protections

unnecessary for conservation of the listed ESU. Through this proposed rule, NMFS proposes a mechanism whereby jurisdictions can be assured that development authorized within those areas is consistent with ESA requirements and avoids or minimizes the risk of take of listed salmonids. Both potential developers and the jurisdictions controlling new development would benefit by assurance that their approvals and development actions conserve listed salmonids.

For example, urban density development in the Portland, Oregon metropolitan area may not occur outside of an adopted urban growth boundary (UGB). Metro, the regional governing body, is in the process of bringing some large areas currently designated as urban reserve areas into the UGB. Before development may commence within such newly included areas, the jurisdiction within which the area lies must prepare and adopt comprehensive plan amendments for urban reserve areas consistent with all provisions of the Metro Urban Growth Management Functional Plan, outlining what development will be allowed and the conditions to be placed upon development.

Similarly, cities both within and outside the Metro region and in other states affected by this rule may be approving new urban development on tracts of a size that allows integrated planning for placement of buildings, transportation, storm water management, and other functions. Several areas under consideration for Metro boundary expansions, and several undeveloped tracts within currently urbanized areas, include streams that support listed salmonids.

This proposed rule further proposes that NMFS will not apply take prohibitions to new developments governed by and conducted in accord with adequate city or county ordinances that NMFS has determined are adequate to help conserve anadromous salmonids. Similarly, within the jurisdiction of the Metro regional government in Oregon, NMFS finds that Metro's Urban Growth Management Functional Plan (Functional Plan) is adequate, take prohibitions will not be applied to development governed by ordinances that Metro has found consistent with that Functional Plan. NMFS must agree in writing that the city or county ordinances or Metro's Functional Plan are sufficient to assure that plans and development complying with them will result in development patterns and actions that conserve listed salmonids. In determining whether Metro Functional Plan or local ordinances are adequate NMFS will focus on 12 issues, discussed here. Many of these principles are derived from Spence, An Ecosystem Approach to Salmonid Conservation (NMFS, 1996) and citations therein. NMFS recognizes that some of these principles require integrated planning for placement of buildings, transportation or storm water management and that those 12 principles will have to be applied in the context within which the development is to occur, which will differ among major new developments and for small, single lot developments or redevelopments. Ordinances or Metro's Functional Plan must assure that urban reserve plans or developments will:

(1) Be sited in appropriate areas, avoiding unstable slopes, wetlands, areas of high habitat value, and similarly constrained sites.

(2) Avoid stormwater discharge impacts to water quality and quantity, and preserve, or move stream flow patterns (hydrograph) closer to, the historic peak flow and other hydrograph characteristics of the watershed. Through a combination of reduction of impervious surfaces, runoff detention, and other techniques development can achieve that purpose within its portion of the watershed. Other development design characteristics, stormwater management practices and buffer requirements will prevent sediment and other pollutants from reaching any watercourse.

(3) Require adequate riparian buffers along all perennial and intermittent streams. Because of the intensity of disturbance in surrounding uplands, riparian buffers are at least as critical in urban areas as in rural areas. Without adequately vegetated riparian set-backs, properly functioning conditions including temperature control, bank stability, stream complexity and pollutant filtering cannot be achieved.

All existing native vegetation must be retained because of its importance in maintaining bank stability, stream temperature, and other characteristics important to water quality and fish

habitat. Prevent destruction of existing native vegetation prior to land use conversions. Where the area contains non-native vegetation, maintained lawn, or is cropped, add or substitute native vegetation within the riparian set-back to achieve a mix of conifer, deciduous trees, understory and ground covers must be planted. To the extent allowed by ownership patterns, the development set-back should be equivalent to greater than one site potential tree height (approximately 200 ft (60 m) or at least to the break in slope for steep slopes) from the outer edge of the channel migration zone on either side of all perennial and intermittent streams, in order to protect off-channel high flow rearing habitat and allow full stream function. Within that set-back the first 50 ft (15 m) should be protected from any mechanical entry or disturbance, structures, or utility installations, and should be dominated by maturing or mature conifers, together with some hardwoods and a vigorous, dense understory of native plants. This inner buffer should also be protected from high-impact recreational use and any trails should be of permeable, natural materials. The inner buffer provides multiple values, including root systems for bank stability. The outer 100–plus ft (30.5 m) of set-back should be entirely in native vegetation (not in maintained lawn) with a mix of conifer, deciduous trees, understory and groundcovers. Disturbances should be minimized.

(4) Avoid stream crossings by roads wherever possible, and where one must be provided, minimize impacts through choice of mode, sizing, placement. One method of minimizing stream crossings and disturbances is to optimize transit opportunities to and within newly developing urban areas. Consider whether potential stream crossings can be avoided by access redesign. Where crossings are necessary, minimize their impacts by preferring bridges over culverts; sizing bridges to a minimum width; designing bridges and culverts to pass at least the 100– year flood and associated debris, and meet ODFW or WDFW criteria; assuring regular monitoring and maintenance over the long term; and prohibiting closing over of any intermittent or perennial stream. WDFW Habitat and Lands Environmental Engineering Division's *Fish Passage Design at Road Culverts*, March 3, 1999, or *Oregon Road/Stream Crossing Restoration Guide: Spring 1999* provide excellent frameworks for action.

(5) Protect historic stream meander patterns, flood plains and channel migration zones; do not allow hardening of stream banks. All development should be designed to allow streams to meander in historic patterns of channel migration. Adequate riparian buffers linked to the channel migration zone should avoid need for bank erosion control in all but the most unusual situations. If required by unusual circumstances, bank erosion should be controlled through vegetation or carefully bioengineered solutions. Rip-rap blankets or similar hardening techniques are not allowed, unless bioengineered solutions are impossible because of particular site constraints.

Habitat elements such as wood, rock, or other naturally occurring material must not be removed from streams. WDFW's ''Integrated Streambank Protection Guidelines, June, 1998'' provide sound guidance, particularly regarding mitigation for gravel recruitment and channel complexity lost through streambank hardening.

(6) Protect wetlands and the vegetation surrounding them to maintain wetland functions. Design around wetlands for their positive habitat, water quality, flood control, and groundwater connection values, providing adequate buffers. Retain all existing natural wetlands.

(7) Preserve the hydrologic capacity of all intermittent and perennial streams to pass peak flows, and assure that, at minimum, the Flood Management Performance Standards of Title 3 of Metro's Urban Growth Management Functional Plan are applied to all development in urban expansion areas, together with any other steps needed to protect hydrologic capacity. In combination with the buffer or set-back provisions above, this means that for new, large developments, fill or dredging should never occur unless in conjunction with a necessary stream crossing.

(8) Landscape to reduce need for watering and application of herbicides, pesticides and fertilizer. Plans must include techniques local governments will use to encourage planting with native vegetation, reduction of lawn area, and reduced water use. These steps will contribute to water conservation and ultimate reduction of flow demands that compete with fish needs, as well as reduce applications of fertilizers, pesticides, herbicides that may contribute to water pollution.

(9) Prevent erosion and sediment run-off during and after construction to prevent discharge of sediments by assuring that at a minimum the requirements of Title 3 of Metro's Urban Growth Management Functional Plan are applied to all development in Metro-area urban expansion areas, and that an equivalent level of protection is provided in other large scale urban developments.

(10) Assure that water supply demands for the new development can be met without impacting flows needed for threatened salmonids either directly or through groundwater withdrawals. Assure that any new water diversions are positioned and screened in a way that prevents injury or death of salmonids.

(11) Identify a commitment to and the responsibility to regularly monitor and maintain any detention basins and other management tools over the long term, and to adapt practices as needed based on monitoring results.

(12) Provide all enforcement, funding, monitoring, reporting, and implementation mechanisms needed to assure that ultimate development will comply with the ordinances or the Metro Urban Growth Management Functional Plan.

To fall outside of the take prohibitions, the development must comply with other state and Federal laws and permit requirements. NMFS concludes that development governed by ordinances or Metro guidelines that meet the listed principles will address the potential negative impacts on salmonids associated with new development. In such circumstances adequate safeguards will be in place that NMFS does not find imposition of additional Federal protections through take prohibitions necessary and advisable for conservation of listed salmonids.

Forest Management Limit on the Take Prohibitions

In the State of Washington, NMFS has been participating in discussions among timber industry, tribes, state and Federal agencies, and interest groups for many months. The purpose of these discussions was to develop modules of forest practices for inclusion in Washington Governor Locke's salmon recovery plan, and consequent implementation through the Department of Natural Resources. The product of those discussions, an April 29, 1999, Forests and Fish Report (FFR) to Governor Locke, provides important improvements in forest practice regulation which, if implemented by the Washington Forest Practices Board in a form at least as protective as laid out in the FFR, will provide a significant level of protection to listed salmonids and contribute to their conservation. It also mandates that all existing forest roads be inventoried for potential impacts on salmonids through culvert inadequacies, erosion, slope failures, and the like, and all needed improvements be completed within 15 years. Because of the substantial detrimental impacts of inadequately sited, constructed or maintained forest roads on salmonid habitat, this feature of the overall FFR provides a significant conservation benefit for listed ESUs in Washington. Because of the above features, described in greater detail here, NMFS does not propose to apply ESA section 9 take prohibitions to non-federal forest management activity conducted in the State of Washington in compliance with the April 29, 1999, FFR and forest practice regulations implemented by the Washington Forest Practices Board that are at least as protective of habitat functions as are the regulatory elements of the FFR. Compliance with the provisions of FFR will address problems historically associated with forest management activity. NMFS concludes that in general the FFR package creates adequate safeguards that no additional Federal protections through imposition of take prohibitions to forest management activity is necessary and advisable for conservation of threatened salmonids.

NMFS believes rapid adoption and implementation of such improved forest practice regulations important to conservation of listed salmonids. Before making a judgement on the adequacy of regulations developed to implement the FFR, NMFS will provide an opportunity for public review and comment.

This restriction of the take prohibitions is limited to the State of Washington. Environmental factors such as current habitat conditions, climate and geology, landscape conditions, and functioning habitat elements vary between ecoregions. In addition, procedural and regulatory differences between Washington and other states containing threatened salmonid ESUs limit the applicability of the FFR or similar provisions to watersheds outside of the State of Washington. Therefore, the take prohibitions applied generally by this proposed rule would apply to forest management activities in other states.

Although NMFS will continue working with Washington and other states toward broadening this ''exception,'' at this time information limitations prevent NMFS from determining that pesticide use or actions under an alternative forest management plan, as contemplated in the total FFR package, are sufficiently protective. Therefore, take prohibitions applied generally by this proposal would apply to those activities.

Elements of the FFR that provide protections or conservation benefits for listed salmonids are summarized here; anyone wishing to review the actual text of or details of those measures should request a copy of the FFR document (see **ADDRESSES**).

(1) It is based on adequate classification of water bodies and broad availability of stream typing information. Effective maintenance and recovery of fish habitats and populations requires specific geographic knowledge of existing and potential fish habitats as well as the higher elevation, non-fishbearing stream systems that create and influence them. Forest

practices should be tailored to protect and reinforce the functions and roles of different stream classes in the continuum of the aquatic ecosystem, such as (A) fishbearing streams which are within the bankfull width of defined stream channels that are currently or potentially capable of supporting fish of any species, perennially or seasonally; (B) perennial, non-fishbearing streams, which include spatially intermittent streams; and (C) seasonal, non-fishbearing streams (intermittent or non-perennial), which have a defined channel that flows water, of any flow volume, some time during the water year. Landowners, regulatory agencies, and the public should have reasonable access to this information, preferably through Geographic Information Systems, or some other accessible repository of stream typing information.

(2) It provides for proper design and maintenance and upgrade of existing, and new forest roads, which is necessary to maintain and improve water quality and instream habitats. Impacts associated with forest roads include changes in hydrology (basin capture, interception of groundwater, increased peak flows); generation and routing of coarse and fine sediments; physical impediments to fish passage; altered riparian function; altered fluvial processes and floodplain interaction; and direct loss of off-channel habitats. The FFR provisions include: (A) avoiding road construction or reconstruction in riparian areas unless alternative options for road construction would likely cause greater damage to aquatic habitats or riparian functions; (B) prohibiting road construction or reconstruction on unstable slopes unless an analysis involving qualified geotechnical personnel and an opportunity for public environmental input shows that road construction can proceed without creating activity-related landslides, sediment delivery or other impacts to stream channels or water bodies; (C) ensuring that new and reconstructed roads must not impair hydrologic connections between stream channels, ground water, and wetlands; must not increase sedimentation to aquatic systems; must use only clean fill materials; and must have adequate drainage and surfacing. Stream crossings must provide adequate fish passage and be designed to accommodate a 100 year flood as well as adequate large woody debris passage; (D) requiring of each landowner/operator an inventory of the condition of all roads within that management ownership, and a plan for repair, reconstruction, maintenance, access control, and where needed, abandonment and/or obliteration of all roads in any land ownership. Inventory showing priorities for all needed work should be completed within 5 years, and work identified as needed completed within 15 years. Road maintenance plans for all new or reconstructed roads must address routine operations (grading, ditch cleaning, etc.), placement of spoil or graded sediments, retention of coarse and large woody debris at stream crossings, placement of large woody debris recruited in proximity to riparian roads, and emergency repairs; (E) Requiring BMPs in all other aspects of forest road operations, including log haul use, recreational use, and seasonal closure as needed to maintain and improve stream habitats and water quality to meet seasonal life history requirements for fishes.

(3) It protects unstable slopes from increased rates and volume of failure delivering coarse and fine sediments to aquatic systems, which can significantly impair fish species life stages. The goal for management of unstable slopes is to avoid an increase or acceleration of the naturally occurring rate and volume of landslides within forested watersheds subject to forest practices, while recognizing that mass-wasting of slopes is an essential element in watershed processes that route large woody debris through the stream system. The program provides a process through which the Washington Department of Natural Resources (DNR) attempts to identify potentially unstable slopes in areas subject to forest operations through interpretation of slope gradient, landform, surficial and parent geologies, current and historic aerial photography, landslide inventories, and computer models of slope stability. These will include inner gorges of streams, convergent headwalls and bedrock hollows with slopes greater than 70 percent, toes of deep-seated landslides with slopes greater than 65 percent, groundwater recharge areas for glacial, or other, deep-seated landslides, soil covered slopes steeper than 70 percent, and slopes along the outer bend of stream channels that have the potential to fail with continued fluvial erosion at the channel toe slope interface.

If a management activity on a potentially unstable slopes is found by the DNR to increase the probability of slope failure, deliver sediment to public resources, and is likely to cause significant adverse impacts, then DNR may approve, approve with conditions, or disapprove the application;

(4) It provides for achieving properly functioning riparian conditions along fishbearing waters. Proper function refers to the suite of riparian functions that includes stream bank stability, shade, litterfall and nutrient input, large woody debris recruitment, and such microclimate factors as air and soil temperature, windspeed, and relative humidity that affect both instream habitat conditions and the vigor and succession of riparian forest ecosystems. Assessing the adequacy of riparian conservation measures requires a synthesis of judgements about individual functions. For example, NMFS judgements about large woody debris function will be based on the proposed management widths, the probability of tree fall with distance from the stream and site potential tree heights of dominant and subdominant species in a mature riparian forest.

Two possible strategies may be followed to achieve properly functioning riparian ecosystems.

A natural succession and growth strategy establishes riparian management zone widths within which no silvicultural treatments occurs. These widths must be at least 2/3 or 3/4 of a site potential tree height for typical dominant conifers, depending on stream width. Disturbance for activities such as road crossings and cable yarding corridors should be avoided. Where ground and vegetation disturbance is unavoidable, it must be limited to a small percentage of the riparian area. Riparian stand development must be allowed to proceed under natural rates of growth and succession to mature conditions, undisturbed by future harvest or silvicultural activities. This strategy is expected to be employed when an evaluation of the riparian zone shows that all available trees need to be retained and allowed to grow and succeed to achieve the desired future conditions (DFCs) and the landowner does not choose to apply silvicultural treatments to accelerate these processes.

A managed succession and growth strategy achieves properly functioning conditions by providing potentially variable width management zones within which silvicultural treatments are allowed. These treatments are prescribed through silvicultural guidelines that assure NMFS that the riparian forest stand is on a growth and succession pathway toward a desired future condition of a mature riparian forest. Once the trajectory of growth toward the desired future condition is achieved the riparian forest must remain on that trajectory without further harvest or silvicultural treatment. Both strategies are expected to provide high

levels of riparian function when implemented.

Characteristics of both the natural succession and managed growth strategies include:

(1) Continuous riparian management zones along all fish-bearing streams.

(2) A core zone at least 50 ft (15 m) wide west of the Cascades and 30 ft (9 m) on the east side, within which no harvest or salvage occurs. This width is measured horizontally from edge of the bankfull channel or where channel migration occurs, from the edge of the channel migration zone.

(3) An inner zone that varies in width by strategy.

(4) An outer zone extending to a site potential tree height (100 year base) that provides a minimum of 20 conifer trees per acre greater than 12 inches diameter (.30m) at breast height. These trees will not be counted as trees retained to satisfy DFC silvicultural guidelines; and

(5) Disturbance limits do not exceed 20–percent of the overstory canopy along the stream length for yarding corridors and 10–percent ground disturbance. Ground disturbance includes, but is not limited to, yarding corridors, soil compaction and exposure, stream crossings and other effects that are a product of log yarding and equipment use. Tree retention to satisfy silvicultural guidelines must be achieved regardless of the area modified for yarding corridors.

The managed succession and growth strategy will achieve desired future conditions for riparian forest ecosystems through:

(6) Selecting a stand composition and age that represents a mature riparian forest as the desired future condition. Generally, mature riparian forest conditions are achieved at between 80 and 200 years, or more, together with a detailed description of basal area, stocking levels, average tree diameters and range of tree diameters of desired species, and any other characteristics needed to describe the DFC. The strategy then sets out a comprehensive set of prescriptions that describe the basal area, stocking, tree diameters, and other metrics that must be retained in a stand of any particular age or composition, to allow forest stand growth and succession to proceed toward the DFC. These prescriptions vary with site productivity (100 year base), dominant species, and likely successional pathways and take into account natural disturbance processes, agents and patterns that affect pathways toward the desired future condition. Silvicultural treatments must be conservative and be limited to only those actions that assure achievement of DFC. Dominant and co-dominant trees will be retained. Once this DFC trajectory has been achieved the riparian stand will be allowed to grow and succeed without further harvest or treatment.

(7) A methodology for field application of riparian prescriptions that provides assurances that desired future conditions will be achieved.

(8) Requiring riparian conservation zone widths that provide bank stability, litterfall and nutrients, shade, large woody debris, sediment filtering, and microclimate functions in the near and long-term. Widths of the inner riparian zone may vary depending on site productivity, silvicultural guidelines and expected trajectories toward DFC but must be 80 ft (24.5 m) or greater for the poorest productivity class. As site productivity increases so must the inner/core zone minimum widths. These minimum widths are necessary to provide riparian functions such as microclimate and shade that may be compromised when, for example, mature, conifer-dominated riparian stands are managed.

(9) Providing for mitigation for disturbance of riparian function, water quality, and fluvial (floodplain) processes from permanent road systems near stream channels through techniques such as replacement of basal area and number of stems lost to the road prism, and placement of trees that have fallen across or onto the fill or cutslopes of riparian roads to the streamward side of the road as part of routine or emergency road maintenance activities.

(10) Treatment guidelines by tree species and region that address stocking levels, tree selection, spacing, and other common forest metrics for a given stand age and condition necessary to achieve DFC; requires protection and release of residual or understory tree species that would form a desirable component of a future mature riparian forest; requires retention of structural diversity in the stand, including openings (spatial diversity), species diversity, and emphasis on tree retention on topographic features that increase the probability of tree fall toward stream channels; and guidelines for maintaining shade necessary to meet fish life history requirements. Shade retention along fish-bearing streams, sensitive sites such as seeps and springs, and other groundwater source areas must be 100 percent of the available shade unless local and/or regional water temperature models and/or standards can be shown to meet fish life history requirements.

(11) Guidelines for conversion of hardwood-dominated riparian areas that cannot achieve the stand requirements of forest stands on a successional pathway toward a desired future condition. They include a 50–ft (15 m) core zone that is not managed and is disturbed only for road crossings and yarding corridors. All overstory conifers must be retained and damage to understory conifers in the inner zone minimized. It also includes a minimum tree retention standard for the outer zone.

(12) A strategy for the conservation of fluvial processes and fish habitats that occur within the channel migration zone. Channel migration zones include those potential and standing riparian forests that occur on floodplains and low terraces along channels that migrate rapidly (on a geologic time-scale) over their valley floors. The area within the channel migration zone is susceptible to flooding and catastrophic events that often rapidly recruits standing and deposited woody material. Secondary channels provide summer and winter habitats for fishes. Therefore, core riparian management zones are measured from the channel migration zone boundary, when present.

(13) Guidelines for salvage of dead or downed timber in the inner and outer riparian zones that retain coarse woody debris on the riparian forest floor at levels seen in mature forests, retain live or standing dead trees in the inner zone that have value as future large woody debris and that can add structural and species diversity to the future riparian forest, retain all dead or downed timber within the channel, any channel migration zone, and the core zone, and minimize site preparation necessary for replanting.

(14) Evaluating the effects of multiple forest practices on the watershed scale through a standardized, repeatable methodology based on the best available science, considering the cumulative effects of forest practices over time, and providing a regulatory basis for precluding or delaying forest practices to prevent actual or potential damage to aquatic habitats that directly or indirectly support anadromous salmonids.

(15) It sets up riparian management zones along perennial and seasonal non-fish bearing streams that:

(A) Manage heat energy input to surface waters by retaining all existing overstory canopy along at least 50 percent of the length of perennial non-fish bearing streams. Shade retention around sensitive sites such as seeps and springs, and other groundwater source areas is 100 percent of the available

shade unless local and/or regional water temperature models and/or standards can be shown to meet fish life history requirements.

(B) Limit the maximum percent of the riparian management area that may be subject to soil disturbance, soil compaction and the mortality alteration of vegetation from equipment, cable movements, log yarding, and road crossings.

(C) Limit equipment use within 30 ft (10 m) of perennial and seasonal non-fishbearing streams.

(D) Ensure partial recruitment and routing of woody material through defined channels to fishbearing waters downstream by retaining an unmanaged riparian zone in excess of one-half of a crown diameter of a mature dominant riparian tree along at least 50 percent of the length of perennial waters.

(E) Provide a continuous riparian buffer in excess of one-half of a crown diameter of a mature dominant riparian tree for a distance of 300 to 500 ft (91.5 to 152.5 m) upstream of confluences with fishbearing waters. This continuous buffer serves as a run-out zone for channelized landslides, an opportunity for groundwater interaction with surface waters and as an important source area for large woody debris recruited to fishbearing streams downstream.

(16) It includes monitoring and adaptive management to assess implementation compliance with, and effectiveness of, current regulations, measured against a baseline data set. Over time, some forest practices will require replacement or adjustment to respond to additions to our current body of knowledge. Whenever monitoring information or new scientific knowledge lead the state forest practice agency to amend a program that has been brought within this ''exception,'' NMFS will publish a notification in the **Federal Register** announcing the availability of those changes for review and comment. Such a notice will provide for a comment period of not less than 30 days, after which NMFS will make a final determination whether the changes conserve listed salmonids and therefore are included within this limit on the take prohibitions.

NMFS finds that, except with respect to pesticide applications and actions under alternative plans, with these safeguards in place, imposition of take prohibitions on forest management activities in Washington is not necessary and advisable, and it would not provide meaningful additional conservation benefits for listed salmonids.

This limit on the take prohibitions will be applicable only within the State of Washington, because an adequate program for any other state would have to take into account interregional and interstate differences in land conditions, current function of various habitat elements, and other differences in situation that affect the biological status of salmonids.

Public Comments Solicited; Public Hearings

NMFS is soliciting comments, information, and/or recommendations on any aspect of this proposed rule from all concerned parties (see **DATES** and **ADDRESSES**). Public hearings provide an additional opportunity for the public to give comments and to permit an exchange of information and opinion among interested parties. NMFS has, therefore, scheduled 15 public hearings throughout the Northwest to receive public comment on this rule and other ESA 4(d) rules proposed concurrently. NMFS will consider all information, comments, and recommendations received before reaching a final decision on 4(d) protections for these ESUs. Public Hearings in Washington, Idaho, and Oregon are scheduled as follows:

(1) January 10, 2000, 6:00 - 9:00 p.m., Metro Regional Center, Council Chamber, 600 NE Grand Ave, Portland, Oregon;

(2) January 11, 2000, 6:00 - 9:00 p.m., Quality Inn, 3301 Market St NE, Salem, Oregon;

(3) January 12, 2000, 6:00 - 9:00 p.m., Lewiston Community Center, 1424 Main Street, Lewiston Idaho;

(4) January 13, 2000, 6:00 - 9:00 p.m., Natural Resource Center, Bureau of Land Management, 1387 South Vinnell Way, Boise, Idaho;

(5) January 18, 2000, 6:00 - 9:00 p.m., City Library, 525 Anderson Ave., Coos Bay, Oregon;

(6) January 19, 2000, 6:00 - 9:00 p.m., Hatfield Science Center, 2030 SE Marine Science Drive, Newport, Oregon;

(7) January 20, 2000, 6:00 - 9:00 p.m., Columbia River Maritime Museum, 1792 Marine Drive, Astoria, Oregon;

(8) January 24, 2000, 6:00 - 9:00 p.m., Eugene Water & Electric Board Training Room, 500 East 4TH Ave. Eugene, Oregon;

(9) January 25, 2000, 6:00 - 9:00 p.m., City Hall, 2nd Floor Council Chamber, 500 SW Dorian Ave., Pendleton, Oregon;

(10) January 26, 2000, 6:00 - 9:00 p.m., Yakima County Courthouse, Room 420, 128 North 2nd St., Yakima, Washington

(11) January 27, 2000, 6:00 - 9:00 p.m., Mid Columbia Senior Center, John Day Room, 1112 West 9th, The Dalles, Oregon;

(12) January 31, 2000, 6:00 - 9:00 p.m., City Hall, Dining Room (Basement), 904 6th St., Anacortes, Washington;

(13) February 1, 2000, 6:00 - 9:00 p.m., Northwest Fisheries Science Center Auditorium, 2725 Montlake Blvd. East, Seattle, Washington;

(14) February 2, 2000, 6:00 - 9:00 p.m., City Hall, Council Chamber, 321 E. 5th, Port Angeles Washington;

(15) February 3, 2000, 6:00 - 9:00 p.m., Sawyer Hall, 510 Desmond Drive, Lacey, Washington;

Special Accomodations

These hearings are physically accessible to people with disabilities. Requests for sign language interpretation or other aids should be directed to Garth Griffin (see **ADDRESSES**) by 7 days prior to each meeting date.

References

A list of references cited in this proposed rule is available upon request (see **ADDRESSES**).

Classification

Regulatory Flexibility Act

When an agency proposes regulations, the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612) requires the agency to prepare and make available for public comment an initial regulatory flexibility analysis (IRFA) that describes the impact of the proposed rule on small businesses, nonprofit enterprises, local governments, and other small entities, unless the agency is able to certify that the action will not have a significant impact on a substantial number of small entities. The IRFA is to aid the agency in considering all reasonable regulatory alternatives that would minimize the economic impact on affected small entities.

The RFA was designed to ensure that agencies carefully assess whether aspects of a proposed regulatory scheme (record keeping, safety requirements, etc.) can be tailored to be less burdensome for small businesses while still achieving the agency's statutory responsibilities. This proposed ESA 4(d) rule has no specific requirements for regulatory compliance; it essentially sets an enforceable performance standard (do not take listed fish) that applies to all entities and individuals within the ESU unless that activity is within a carefully circumscribed set of activities on which NMFS proposes not to impose the take prohibitions. Hence, the universe of entities reasonably expected to be directly or indirectly impacted by the prohibition is broad.

The number of entities potentially affected by imposition of take prohibitions is substantial and the geographic range of these regulations crosses four states. Activities potentially affecting salmonids are those associated with agriculture, forestry, fishing, mining, heavy construction, highway and street construction, logging, wood and paper mills, electric services, water transportation, and other industries. As many of these activities involve local, state, and Federal oversight, including permitting, governmental activities from the smallest towns or planning units to the largest cities will also be impacted. The activities of some nonprofit organizations will also be affected by these regulations.

NMFS examined in as much detail as practical the potential impact of the regulation on a sector by sector basis. Unavailable or inadequate data leaves a high degree of uncertainty surrounding both the numbers of entities likely to be affected, and the characteristics of any impacts on particular entities. The problem is complicated by differences among entities even in the same sector as to the nature and size of their current operations, contiguity to waterways, individual strategies for dealing with the take prohibitions, etc.

There are no record-keeping or reporting requirements associated with the take prohibition and, therefore, it is not possible to simplify or tailor record keeping or reporting to be less burdensome for small entities. Some programs for which NMFS has found it not necessary to prohibit take involve recordkeeping and/or reporting to support that continuing determination. NMFS has attempted to minimize any burden associated with programs for which the take prohibitions are not enacted.

In formulating this proposed rule, NMFS considered several alternative approaches, described in more detail in the IRFA. These included

(1) Enacting a ''global'' protective regulation for threatened species, through which section 9 take prohibitions are applied automatically to all threatened species at the time of listing; (2) ESA 4(d) protective regulations with no limits, or only a few limits, on the application of the take prohibition for relatively uncontroversial activities such as fish rescue/salvage; (3) Take prohibitions in combination with detailed prescriptive requirements applicable to one or more sectors of activity; (4) ESA 4(d) protective regulations similar to the existing interim 4(d) protective regulations for Southern Oregon/Northern California coast coho, which includes four additional limitations on the extension of the take prohibition, for harvest plans, hatchery plans, scientific research, and habitat restoration projects, when in conformance with specified criteria; (5) A protective regulation similar to the interim rule, but with recognition of more programs and circumstances in which application of take prohibitions is not necessary and advisable. That is the approach taken in this proposed rule, which limits the take prohibition for the seven items discussed earlier, but would also limit application of the take prohibition for properly screened water diversions, for routine road maintenance in Oregon, for Portland's Parks and Recreation Department integrated pest management program, for urban density development activities, and for forest management (including timber harvest) in Washington. For several of these categories (harvest, artificial propagation, habitat restoration, and urban development) the regulation is structured so that it allows plans or programs developed after promulgation of the rule to be submitted to NMFS for review under the criteria in the rule; (6) An option earlier advocated by the State of Oregon and others, in which section ESA 9 take prohibitions would not be applied to any activity addressed by the Oregon Plan for Salmon and Watersheds, fundamentally deferring protections to the state. At present, NMFS concludes that doing so would not provide sufficient protections to the listed steelhead; and (7) Enacting no protective regulations for threatened steelhead. That course would leave the ESUs without any protection other than provided by ESA section 7 consultations for actions with some Federal nexus. Since NMFS' decision to list the ESUs as threatened, identifying broad segments of human activity as major factors in the decline of these steelhead ESUs, NMFS could not support that approach at this time as being consistent with the obligation to enact such protective regulations as are ''necessary and advisable to provide for the conservation of'' the listed steelhead.

NMFS concludes that at the present time there are no legally viable alternative rules that would have less impact on small entities and still fulfill the agency's obligations to protect listed salmonids. The first four alternatives may result in unnecessary impacts on economic activity of small entities, given NMFS' judgment that more limited protections would suffice to conserve the species.

If you believe the alternatives contained in this proposed rule will impact your economic activity, please comment on whether there is a preferable alternative (including alternatives not described here) that would meet the statutory requirements of ESA section 4(d). Please describe the impact that alternative would have on your economic activity and why the alternative is preferable.

Executive Order 12866

In applying take prohibitions broadly to protect seven ESUs of threatened salmonids, this proposed rule likely constitutes a significant action for purposes of Executive Order 12866. As discussed with respect to the Regulatory Flexibility Act analysis, data are not available to quantify the impacts on small entities in specific sectors of the economy; for the same reasons it is not possible to quantify costs of avoiding take of listed fish for all portions of the economy. However, as discussed earlier, NMFS has a clear statutory responsibility to enact whatever protective regulations are necessary to provide for conservation of threatened species. Abdicating that responsibility is not an option. For several prior listings of threatened salmonids, take prohibitions were imposed in a blanket manner, with no limitations. In the case of these seven salmonid ESUs, NMFS has sought an alternative to blanket imposition of the prohibitions. NMFS has worked with a variety of jurisdictions to identify programs or sectors of activity for which it is not necessary and advisable to impose take prohibitions, and this proposed rule recognizes thirteen such circumstances as limits on take prohibitions. NMFS believes that this approach provides the benefits demanded by the ESA (protection of threatened species) while minimizing uncertainty and costs for sectors of the economy wherever possible.

Executive Order 13084–Consultation and Coordination with Indian Tribal Governments

The United States has a unique legal relationship with tribal governments as set forth in the Constitution, treaties, statutes, and Executive Orders. In keeping with this relationship, with the mandates of the Presidential Memorandum on Government to Government Relations with Native American Tribal Governments (59 FR 22951), and with Executive Order 13084, NMFS has coordinated with tribal governments and organizations in the geographic areas affected by this proposed rule as it was developed over the past year. For instance, NMFS has provided these entities with the opportunity to provide input on the

draft rule and the approach taken. In addition, NMFS has met with tribal governments and organizations and had numerous individual staff-to-staff conversations, in an effort to give consideration to the viewpoints of tribes and tribal organizations related to the protection of these species.

NMFS will schedule more formal consultation opportunities with each potentially affected tribe, to be completed during the first two months after publication. NMFS will continue to give careful consideration to all written or oral comments received and will continue its contacts and discussions with interested tribes as the agency moves toward a final rule.

Executive Order 13132–Federalism

In keeping with the intent of the Administration and Congress to provide continuing and meaningful dialogue on issues of mutual State and Federal interest, NMFS has conferred with numerous State, local and other governmental entities in the course of preparing this proposed rule. As the process continues, NMFS intends to continue engaging in informal and formal contacts with all affected States, discussing the rule with any interested local or regional entities and giving careful consideration to all written or oral comments received. As one part of that continued process, NMFS has scheduled public hearings to be held throughout the geographic range of the effected ESUs.

NMFS' interim ESA 4(d) rule for Southern Oregon/ Northern California Coast coho ESU (62 FR 38479) was the first instance in which the agency defined some reasonably broad categories of activity, both public and private, for which take prohibitions were not necessary and advisable. Since then, NMFS has continued discussions with various Oregon and California governmental agencies and representatives involved with that ESU, and has also sought working relationships with other States and governmental organizations promoting salmonid restoration efforts throughout the geographic range affected by this proposed rule. Some of the limits in this proposed rule reflect the coordination NMFS has had with State and local jurisdictions.

In addition to these efforts, NMFS staff have given numerous presentations to interagency forums, community groups, and others, and served on a number of interagency advisory groups or task forces considering conservation measures. Many cities, counties and other local governments have sought guidance and consideration of their planning efforts from NMFS, and NMFS staff have met with them as rapidly as our resources permit. Finally, NMFS' Sustainable Fisheries Division staff have continued close coordination with State fisheries agencies toward development of artificial propagation and harvest plans and programs that will be protective of listed salmonids and ultimately may be recognized within this rule. NMFS expects to continue to work with all of these entities and others toward the clearest and best possible final rule that protects these effected ESUs, and toward recognizing other conservation efforts in future amendments or through other ESA mechanisms.

Paperwork Reduction Act

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection-of-information subject to the requirements of the Paperwork Reduction Act (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) control number.

This proposed rule contains collection-of-information requirements subject to review and approval by OMB under the PRA. These requirements have been submitted to OMB for approval. Public reporting burden for this collection-of-information is estimated to average 5 hours per response for water diverters who elect to provide documentation that their diversion structures are screened to NMFS criteria; 20 hours per response for cities or counties that elect to take advantage of the ODOT routine road maintenance program; or 30 hours per response for Metro, cities, or counties that elect to submit guidelines or ordinances for a limit on take prohibitions for urban development. Annual reporting for the limit regarding aiding sick, injured, stranded salmonids is estimated to average 5 hours. Annual reporting for the urban development limit is estimated to average 10 hours. This proposed rule also contains a collection-of-information requirement associated with habitat restoration activities conducted under watershed plans that has received PRA approval from OMB under control number 0648–0230. The public reporting burden for the approval of Watershed Plans is estimated to average 10 hours. These estimates include any time required for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection-of-information. Also, this proposed rule contains collection-of-information requirements not subject to the PRA because they are not requirements of general applicability, affecting fewer than ten potential respondents.

Public comment is sought regarding: whether this proposed collection-of-information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection-of-information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to NMFS (see **ADDRESSES**), and to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC. 20503 (Attention: NOAA Desk Officer). Comments must be received by March 3, 2000.

National Environmental Policy Act

NMFS has completed an Environmental Assessment (EA) for this action pursuant to the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq*. NMFS concludes that this alternative will not result in environmentally significant negative impacts and may have several beneficial effects, and that preparation of an Environmental Impact Statement is not required. Copies of the EA are available upon request (see ADDRESSES).

List of Subjects in 50 CFR Part 223

Endangered and threatened species, Exports, Imports, Marine mammals, Transportation.

Dated: December 22, 1999.

Penelope D. Dalton,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 223 is proposed to be amended as follows:

PART 223—THREATENED MARINE AND ANADROMOUS SPECIES

1. The authority citation for part 223 is revised to read as follows:

Authority: 16 U.S.C. 1531–1543; subpart B, § 223.12 also issued under 16 U.S.C. 1361 *et seq*.

2. Section 223.203 is revised to read as follows:

§ 223.203 Anadromous fish.

(a) *Prohibitions.* The prohibitions of section 9 of the ESA (16 U.S.C. 1538) relating to endangered species apply to

the threatened species of salmonids listed in § 223.102(a)(1) through (a)(4), (a)(10), (a)(12), (a)(13), and (a)(16) through (a)(19) except as provided in paragraph (b) of this section.

(b) *Limits on the take prohibitions.* (1) The exceptions of section 10 of the ESA (16 U.S.C. 1539) and other exceptions under the Act relating to endangered species, including regulations in part 222 of this chapter II implementing such exceptions, also apply to the threatened species of salmonids listed in § 223.102(a)(1) through (a)(4), (a)(10), (a)(12), (a)(13), and (a)(16) through (a)(19). This section supersedes other restrictions on the applicability of part 222 of this chapter.

(2) The prohibitions of paragraph (a) of this section relating to threatened species of salmonids listed in § 223.102(a)(1) through (a)(4), (a)(10), (a)(12), (a)(13), and (a)(16) through (a)(19) do not apply to activities specified in an application for a permit for scientific purposes or to enhance the conservation or survival of the species, provided that the application has been received by the Assistant Administrator for Fisheries, NOAA (AA), no later than 30 days after the date of publication of the final rule in the **Federal Register**. The prohibitions of paragraph (a) of this section apply to these activities upon the AA's rejection of the application as insufficient, upon issuance or denial of a permit, or 6 months after effective date of the final rule, whichever occurs earliest.

(3) The prohibitions of paragraph (a) of this section relating to threatened species of salmonids listed in § 223.102(a)(1) through (a)(4), (a)(10), (a)(12), (a)(13), and (a)(16) through (a)(19) do not apply to any employee or designee of NMFS, the United States Fish and Wildlife Service, any Federal land management agency, the Idaho Department of Fish and Game, Washington Department of Fish and Wildlife, the Oregon Department of Fish and Wildlife, or of any other governmental entity that has co-management authority over fishery management for the listed salmonids, when the employee or designee, acting in the course of their official duties, takes a threatened salmonid without a permit if such action is necessary to:

(i) aid a sick, injured, or stranded salmonid,

(ii) dispose of a dead salmonid, or

(iii) salvage a dead salmonid which may be useful for scientific study.

(iv) Each agency acting under this limit on the take prohibitions of paragraph (a) of this section is to report to NMFS the numbers of fish handled and their status, on an annual basis. A designee of the listed entities is any individual the Federal or state fishery agency or other co-manager has authorized in writing to perform the listed functions.

(4) The prohibitions of paragraph (a) of this section relating to threatened species of salmonids listed in § 223.102 (a)(10), (a)(12), (a)(13), and (a)(16) through (19) do not apply to fishery harvest activities provided that:

(i) Fisheries are managed in accordance with a NMFS-approved Fishery Management and Evaluation Plan (FMEP) and implemented in accordance with a Memorandum of Agreement (MOA) between the state of Washington, Oregon, or Idaho (State) and NMFS. NMFS will approve an FMEP only if it clearly defines its intended scope and area of impact, and sets for the management objectives and performance indicators for the plan. The plan must adequately address the following criteria:

(A) Defines populations within affected ESUs, taking into account spatial and temporal distribution; genetic and phenotypic diversity; and other appropriate identifiable unique biological and life history traits. Populations may be aggregated for management purposes when dictated by information scarcity, if consistent with survival and recovery of the ESU. In identifying management units, the plan shall describe the reasons for using such units in lieu of population units and describe how the management units are defined, given biological and life history traits, so as to maximize consideration of the important biological diversity contained within the ESU, respond to the scale and complexity of the ESU, and help ensure consistent treatment of listed salmonids across a diverse geographic and jurisdictional range.

(B) Determines and applies thresholds for viable and critical populations consistent with the concepts contained in a draft technical document titled ''Viable Salmonid Populations'' (NMFS, December 1999). Before this regulation becomes final, the Director of the Federal Register must approve this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the draft paper may be obtained on request to NMFS, Protected Resources Division, 525 NE Oregon St., Suite 500, Portland, OR 97232-2737, or NMFS, Office of Protected Resources, 1315 East-West Highway, Silver Spring, MD 20910. The Viable Salmonid Populations paper provides a framework for identifying the biological requirements of listed salmonids, assessing the effects of management and conservation actions, and insuring that such actions provide for the survival and recovery of listed species. Proposed management actions must recognize the significant differences in risk associated with these two threshold states and respond accordingly to minimize the risks to long-term population. Harvest actions impacting populations that are functioning at or above the viable threshold must be designed to maintain the population or management unit at or above that level. For populations shown with a high degree of confidence to be above critical levels but not yet at viable levels, harvest management must not appreciably slow the population's achievement of viable function. Harvest actions impacting populations that are functioning at or below critical threshold must not be allowed to appreciably increase genetic and demographic risks facing the population and must be designed to permit the population's achievement of viable function, unless the plan demonstrates that such an action will not appreciably reduce the likelihood of survival and recovery of the ESU in the wild despite any increased risks to the individual population.

(C) Sets escapement objectives or maximum exploitation rates for each management unit or population based on its status, and a harvest program that assures not exceeding those rates or objectives. Maximum exploitation rates must not appreciably reduce the likelihood of survival and recovery of the ESU. Management of fisheries where artificially propagated fish predominate must not compromise the management objectives for commingled naturally spawned populations.

(D) Displays a biologically based rationale demonstrating the harvest management strategy will not appreciably reduce the likelihood of survival and recovery of the ESU in the wild, over the entire period of time the proposed harvest management strategy affects the population, including effects reasonably certain to occur after the proposed actions cease.

(E) Includes effective monitoring and evaluation programs to assess compliance, effectiveness and parameter validation. At a minimum, harvest monitoring programs must collect catch and effort data, information on escapements, and information on biological characteristics such as age, fecundity, size and sex data, and migration timing.

(F) Provides for evaluating monitoring data and making any revisions of assumptions, management strategies, or objectives that data shows are needed.

(G) Provides for effective enforcement and education. Coordination among involved jurisdictions is an important element in ensuring regulatory effectiveness and coverage.

(H) Includes restrictions on resident species fisheries that minimize any take of listed species, including time, size, gear, and area restrictions.

(I) Is consistent with plans and conditions set within any Federal court proceeding with continuing jurisdiction over tribal harvest allocations.

(ii) The state monitors the amount of take of listed salmonids occurring in its fisheries and provides to NMFS on an annual basis a report summarizing this information, as well as the implementation and effectiveness of the FMEP. The State shall provide NMFS with access to all data and reports prepared concerning the implementation and effectiveness of the FMEP.

(iii) The state confers annually with NMFS on their fishing regulation changes to ensure congruity with the approved FMEP.

(iv) Prior to approving a new or amended FMEP, NMFS will publish notification in the **Federal Register** announcing its availability for public review and comment. Such an announcement will provide for a comment period on the draft FMEP of not less than 30 days.

(v) NMFS approval of a plan shall be a written approval by NMFS' Northwest Regional Administrator.

(vi) On a regular basis, NMFS will evaluate the effectiveness of the program in protecting and achieving a level salmonid productivity commensurate with conservation of the listed salmonids. If it is not, NMFS will identify ways in which the program needs to be altered or strengthened. If the responsible agency does not make changes to respond adequately to the new information, NMFS will publish notification in the **Federal Register** announcing its intention to impose take prohibitions on activities associated with that program. Such an announcement will provide for a comment period of not less than 30 days, after which NMFS will make a final determination whether to subject the activities to all ESA section 9 take prohibitions.

(5) The prohibitions of paragraph (a) of this section relating to threatened species of salmonids listed in § 223.102(a)(10), (a)(12), (a)(13) and (a)(16) through (19) do not apply to activity associated with artificial propagation programs provided that:

(i) A state or Federal Hatchery and Genetics Management Plan (HGMP) has been approved by NMFS as meeting the following criteria:

(A) The plan has clearly stated goals, performance objectives, and performance indicators that indicate the purpose of the program, its intended results, and measurements of its performance in meeting those results. Goals shall address whether the program is intended to meet conservation objectives, contributing to the ultimate sustain ability of natural spawning populations, and/or intended to augment tribal, recreational, or commercial fisheries. Objectives should enumerate the results desired from the program against which its success or failure can be determined.

(B) The plan utilizes the concepts of viable and critical salmonid population threshold, consistent with the concepts contained in a draft technical document titled ''Viable Salmonid Populations'' (NMFS, December 1999). Before this regulation becomes final, the Director of the Federal Register must approve this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained on request to NMFS, Protected Resources Division, 525 NE Oregon St., Suite 500, Portland, OR 97232-2737, or NMFS, Office of Protected Resources, 1315 East-West Highway, Silver Spring, MD 20910. Listed salmonids may be purposefully taken for broodstock purposes only if the donor population is currently at or above the viable threshold and the collection will not impair its function; if the donor population is not currently viable but the sole objective of the current collection program is to enhance the propagation or survival of the listed ESU; or if the donor population is shown with a high degree of confidence to be above critical threshold although not yet functioning at viable levels, and the collection will not appreciably slow the attainment of viable status for that population.

(C) Taking into account health, abundance and trends in the donor population, broodstock collection programs reflect appropriate priorities. The primary purpose of broodstock collection programs of listed species is to reestablish indigenous salmonid populations for conservation purposes. Such programs include restoration of similar, at-risk populations within the same ESU, and reintroduction of at-risk populations to underseeded habitat. After the species' conservation needs are met, and when consistent with survival and recovery the species, broodstock collection programs may be authorized by NMFS for secondary purposes, such as to sustain tribal, recreational and commercial fisheries.

(D) The HGMP shall include protocols to address fish health, broodstock collection, broodstock spawning, rearing and release of juveniles, deposition of hatchery adults, and catastrophic risk management.

(E) The HGMP shall evaluate, minimize, and account for the propagation program's genetic and ecological effects on natural populations, including disease transfer, competition, predation, and genetic introgression caused by straying of hatchery fish.

(F) The HGMP will describe interrelationships and interdependencies with fisheries management. The combination of artificial propagation programs and harvest management must be designed to provide as many benefits and as few biological risks as possible for the listed species. HGMPs for programs whose purpose is to sustain fisheries must not compromise the ability of FMEPs or other management plans to conserve listed salmonids.

(G) Adequate artificial propagation facilities exist to properly rear progeny of naturally spawned broodstock to maintain population health and diversity, and to avoid hatchery-influenced selection or domestication.

(H) Adequate monitoring and evaluation exist to detect and evaluate the success of the hatchery program and any risks to or impairment of recovery of the listed ESU.

(I) The HGMP provides for evaluating monitoring data and making any revisions of assumptions, management strategies, or objectives that data shows are needed;

(J) An MOA or some other formal agreement is in place between the state and NMFS, to ensure proper implementation of the HGMPs and reporting of effects and results. For Federally operated or funded hatcheries, the section 7 consultation will achieve this purpose.

(K) The HGMP is consistent with plans and conditions set within any Federal court proceeding with continuing jurisdiction over tribal harvest allocations.

(ii) The state monitors the amount of take of listed salmonids occurring in its hatchery program and provides to NMFS on an annual basis a report summarizing this information, as well as the implementation and effectiveness of the HGMP. The state shall provide NMFS with access to all data and reports prepared concerning the implementation and effectiveness of the HGMP.

(iii) The state confers with NMFS on an annual basis regarding intended collections of listed broodstock to ensure congruity with the approved HGMP.

(iv) Prior to final approval of an HGMP, NMFS will publish notification in the **Federal Register** announcing its availability for public review and comment for a period of at least 30 days.

(v) NMFS approval of a plan shall be a written approval by NMFS' Northwest Regional Administrator.

(vi) On a regular basis, NMFS will evaluate the effectiveness of the HGMP in protecting and achieving a level salmonid productivity commensurate with conservation of the listed salmonids. If it is not, NMFS will identify ways in which the program needs to be altered or strengthened. If the responsible agency does not make changes to respond adequately to the new information, NMFS will publish notification in the **Federal Register** announcing its intention to impose take prohibitions on activities associated with that program. Such an announcement will provide for a comment period of not less than 30 days, after which NMFS will make a final determination whether to subject the activities to all ESA section 9 take prohibitions.

(6) The prohibitions of paragraph (a) of this section relating to threatened species of salmonids listed in § 223.102 (a)(12), (a)(13), and (a)(16) through (a)(19) do not apply to actions undertaken in compliance with a resource management plan developed jointly by the States of Washington, Oregon and/or Idaho and the Tribes (joint plan) within the continuing jursidiction of *United States* v. *Washington* or *United States* v. *Oregon*, the on-going Federal court proceedings to enforce and implement reserved treaty fishing rights, provided that:

(i) The Secretary has determined pursuant to 50 CFR § 223.209(b)(the limit on take prohibitions for tribal resource management plans) and the government-to-government processes therein that implementing and enforcing the joint tribal/state plan will not appreciably reduce the likelihood of survival and recovery of affected threatened ESUs.

(ii) The joint plan will be implemented and enforced within *United States* v. *Washington* or *United States* v. *Oregon*.

(iii) In making that determination for a joint plan, the Secretary has taken comment on how any fishery management plan addresses the criteria in § 223.203(b)(4), or how any hatchery and genetic management plan addresses the criteria in § 223.203(b)(5).

(iv) The Secretary shall publish notice in the **Federal Register** of any determination whether or not a joint plan will appreciably reduce the likelihood of survival and recovery of affected threatened ESUs, together with a discussion of the biological analysis underlying that determination.

(7) The prohibitions of paragraph (a) of this section relating to threatened species of salmonids listed in § 223.102(a)(10), (a)(12), (a)(13), and (a)(16) through (a)(19) do not apply to scientific research activities provided that:

(i) Scientific research activities involving purposeful take is conducted by employees or contractors of the Oregon Department of Fish and Wildlife (ODFW) or Washington Department of Fish and Wildlife (WDFW)(Agencies), or as part of a coordinated monitoring and research program overseen by ODFW or WDFW.

(ii) ODFW and WDFW provide NMFS with a list of all scientific research activities involving direct take planned for the coming year for NMFS' review and approval, including an estimate of the total direct take that is anticipated, a description of the study design including a justification for taking the species and a description of the techniques to be used, and a point of contact.

(iii) ODFW and WDFW annually provide NMFS with the results of scientific research activities directed at threatened salmonids, including a report of the direct take resulting from the studies and a summary of the results of such studies.

(iv) Scientific research activities that may incidentally take threatened salmonids are either conducted by agency personnel, or are in accord with a permit issued by the Agency.

(v) ODFW and WDFW, respectively, provide NMFS annually, for its review and approval, a report listing all scientific research activities they conduct or permit that may incidentally take threatened salmonids during the coming year. Such reports shall also contain the amount of incidental take of threatened salmonids occurring in the previous year's scientific research activities and a summary of the results of such research.

(vi) Electrofishing in any body of water known or suspected to contain threatened salmonids is conducted in accord with ''Guidelines for Electrofishing Waters Containing Salmonids Listed Under the Endangered Species Act''.

(vii) NMFS' approval of a plan shall be a written approval by NMFS' Northwest Regional Administrator.

(8) The prohibitions of paragraph (a) of this section relating to threatened species of salmonids listed in § 223.102(a)(10), (a)(12), (a)(13), and (a)(16) through (19) do not apply to habitat restoration activities, as defined in paragraph (b)(8)(iii) of this section, provided that:

(i) The states of Washington or Oregon certify to NMFS in writing the activity is part of a watershed conservation plan, where:

(A) NMFS has certified to the State in writing that the State's watershed conservation plan guidelines meet the following standards. Guidelines must result in plans that:

(*1*) Consider the status of the affected species and populations;

(*2*) Design and sequence restoration activities based upon information obtained from an overall watershed assessment;

(*3*) Prioritize restoration activities based on information from watershed assessment;

(*4*) Evaluate the potential severity of direct, indirect and cumulative impacts on the species and habitat as a result of the activities the plan would allow;

(*5*) Provide for effective monitoring;

(*6*) Use best available science and technology of habitat restoration, use adaptive management to incorporate new science and technology into plans as they develop, and where appropriate, provide for project specific review by disciplines such as hydrology or geomorphology;

(*7*) Assure that any taking resulting from implementation will be incidental;

(*8*) Require the state, local government, or other responsible entity to monitor, minimize and mitigate the impacts of any such taking to the maximum extent practicable;

(*9*) Will not result in long-term adverse impacts;

(*10*) Assure that the safeguards required in watershed conservation plans will be funded and implemented;

(B) The state has made a written finding that the watershed conservation plan, including its provisions for clearing projects with other agencies, is consistent with those state watershed conservation plan guidelines.

(C) NMFS concurs in writing with the state finding.

(ii) Until a watershed conservation plan is approved under paragraph (b)(8)(i) of this section, or until 2 years after publication of the final rule in the **Federal Register**, whichever occurs first, take prohibitions shall not apply to the following habitat restoration activities if

any in-water work is consistent with state in-water work season guidelines established for fish protection, or if there are none, limited to summer low-flow season with no work from the start of adult migration through the end of juvenile outmigration. The work must be implemented in compliance with the listed conditions and guidance:

(A) *Riparian zone planting or fencing.* Conditions include no in-water work; no sediment runoff to stream; native vegetation only; fence placement in Oregon consistent with standards in the *Oregon Aquatic Habitat Restoration and Enhancement Guide* (1999).

(B) *Livestock water development off-channel.* No modification of bed or banks; no in-water structures except minimum necessary to provide source for off-channel watering; no sediment runoff to stream; diversion adequately screened; diversion in accord with state law and has not more than de minimus impacts on flows that are critical to fish; diversion quantity shall never exceed 10 percent of current flow at any moment, nor reduce any established instream flows.

(C) *Large wood (LW) placement.* Conditions: does not apply to LW placement associated with basal area credit in Oregon. No heavy equipment allowed in stream. Wood placement projects should rely on the size of wood for stability and may not use permanent anchoring including rebar or cabling (these would require section 7 consultation or a section 10 permit) (biodegradable manila/sisal rope may be used for temporary stabilization). Wood should be at least two times the bankfull stream width (1.5 times the bankfull width for wood with rootwad attached) and meet diameter requirements and stream size and slope requirements outlined in *A Guide to Placing Large Wood in Streams*, Oregon Department of Forestry and Department of Fish and Wildlife (1995). LW placement must be either associated with an intact, well-vegetated riparian area which is not yet mature enough to provide LW; or accompanied by a riparian revegetation project adjacent or upstream that will provide LW when mature. Placement of boulders only where human activity has created a bedrock stream situation not natural to that stream system, where the stream segment would normally be expected to have boulders, and where lack of boulder structure is a major contributing factor to the decline of the stream fisheries in the reach. Boulder placement projects within this exception must rely on size of boulder for stability, not on any artificial cabling or other devices. See applicable guidance in *Oregon Aquatic Habitat Restoration and Enhancement Guide* (1999).

(D) *Correcting road/stream crossings, including culverts, to allow or improve fish passage.* See WDFW's *Fish Passage Design at Road Culverts*, March 3, 1999; *Oregon Road/Stream Crossing Restoration Guide: Spring 1999.*

(E) *Repair, maintenance, upgrade or decommissioning of roads in danger of failure.* All work to be done in dry season; prevent any sediment input into streams; follow state requirements.

(F) *Salmonid carcass placement.* Carcass placement should be considered only where numbers of spawners are substantially below historic levels. Follow applicable guidelines in *Oregon Aquatic Habitat Restoration and Enhancement Guide* (1999), including assuring that the proposed source of hatchery carcasses is from the same watershed or river basin as the proposed placement location. To prevent introduction of diseases from hatcheries, such as Bacterial Kidney Disease, carcasses must be approved for placement by a state fisheries fish pathologist.

(iii) ''Habitat restoration activity'' is defined as an activity whose primary purpose is to restore natural aquatic or riparian habitat conditions or processes. ''Primary purpose'' means the activity would not be undertaken but for its restoration purpose.

(iv) Prior to approving watershed conservation plan guidelines under paragraph (b)(8)(i) of this section, NMFS will publish notification in the **Federal Register** announcing the availability of the draft guidelines for public review and comment. Such an announcement will provide for a comment period on the draft guidelines of not less than 30 days.

(v) NMFS approval of a plan shall be a written approval by NMFS' Northwest Regional Administrator.

(vi) On a regular basis, NMFS will evaluate the effectiveness of a state's watershed plan guidelines in assuring plans that protect a level salmonid productivity commensurate with conservation of the listed salmonids. If insufficient, NMFS will identify ways in which the guidelines or program needs to be altered or strengthened. If the state does not make changes to respond adequately to the new information, NMFS will publish notification in the **Federal Register** announcing its intention to impose take prohibitions on activities associated with that program. Such an announcement will provide for a comment period of not less than 30 days, after which NMFS will make a final determination whether to subject the activities to all section 9 take prohibitions.

(vii) Before this regulation becomes final, the Director of the Federal Register must approve the incorporation by reference of each of the state guidance documents listed in this habitat restoration limit on the take prohibitions in accordance with U.S.C.552(a) and 1 CFR part 51. The documents are: Oregon Aquatic Habitat Restoration and Enhancement Guide (1999; A Guide to Placing Large Wood in Streams, Oregon Department of Forestry and Department of Fish and Wildlife (1995); WDFW's Fish Passage Design at Road Culverts, March 3, 1999; and Oregon Road/Stream Crossing Restoration Guide; Spring 1999. Copies of the documents may be obtained on request to NMFS, Protected Resources Division, 525 NE Oregon St., Suite 500, Portland, OR 97232–2737, or NMFS, Office of Protected Resources, 1315 East-West Highway, Silver Spring, MD 20910.

(9) The prohibitions of paragraph (a) of this section relating to threatened species of salmonids listed in § 223.102(a)(10), (a)(12), (a)(13), and (a)(16) through (a)(19) do not apply to the physical diversion of water from a stream or lake, provided that:

(i) NMFS' engineering staff has agreed in writing that the diversion facility is screened, maintained and operated in compliance with Juvenile Fish Screen Criteria, National Marine Fisheries Service, Northwest Region, Revised February 16, 1995 with Addendum of May 9, 1996. Before this regulation becomes final, the Director of the Federal Register must approve this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained on request to NMFS, Protected Resources Division, 525 NE Oregon St., Suite 500, Portland, OR 97232-2737, or NMFS, Office of Protected Resources, 1315 East-West Highway, Silver Spring, MD 20910.

(ii) The owner or manager of the diversion will allow any NMFS engineer, biologist or Authorized Officer access to the diversion facility for purposes of inspection and determination of continued compliance with the criteria.

(iii) This limit on the prohibitions of paragraph (a) of this section does not encompass any impacts of reduced flows resulting from the diversion, or caused during installation of the diversion device. These impacts remain subject to the prohibition on take of listed salmonids.

(10) The prohibitions of paragraph (a) of this section relating to threatened

species of salmonids listed in § 223.102(a)(10), (a)(13), (a)(17) and (a)(18) do not apply to road maintenance activities provided that:

(i) The activity results from routine road maintenance activity by Oregon Department of Transportation, county or city employees that complies with the *Oregon Department of Transportation's Maintenance Management System Water Quality and Habitat Guide* (June, 1999). Before this regulation becomes final, the Director of the Federal Register must approve this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained on request to NMFS, Protected Resources Division, 525 NE Oregon St., Suite 500, Portland, OR 97232-2737, or NMFS, Office of Protected Resources, 1315 East-West Highway, Silver Spring, MD 20910.

(ii) Neither pesticide and herbicide spraying nor ODOT dust abatement are included within this exception, even if in accord with the state's guidance.

(iii) Prior to implementing any changes to the 1999 Guide the Oregon Department of Transportation will provide NMFS a copy of the proposed change for review and approval as within this exception.

(iv) Prior to approving any change in the 1999 Guide, NMFS will publish notification in the **Federal Register** announcing the availability of the draft changes for public review and comment. Such an announcement will provide for a comment period on the draft changes of not less than 30 days.

(v) Any city or a county in Oregon desiring its routine road maintenance activities to be within this exception first enters a memorandum of agreement with NMFS committing to apply the management practices in the guide, detailing how it will assure adequate training, tracking, and reporting, and describing in detail any dust abatement practices it requests to be covered.

(vi) On a regular basis, NMFS will evaluate the effectiveness of the program in protecting and achieving habitat function commensurate with conservation of the listed salmonids. If it is not, NMFS will identify ways in which the program needs to be altered or strengthened. Changes may be required if the program is not protecting desired habitat functions, or where even with the habitat characteristics and functions originally targeted, habitat is not supporting population productivity levels needed to conserve the ESU. If ODOT does not make changes to respond adequately to the new information, NMFS will publish notification in the **Federal Register** announcing its intention to impose take prohibitions on activities associated with the program. Such an announcement will provide for a comment period of not less than 30 days, after which NMFS will make a final determination whether to subject the activities to all ESA section 9 take prohibitions.

(vii) NMFS' approval of city or county programs following the ODOT program, or of any amendments, shall be a written approval by NMFS' Northwest Regional Administrator.

(11) The prohibitions of paragraph (a) of this section relating to threatened species of salmonids listed in § 223.102(a)(13), (a)(17) and (a)(18) do not apply to activities within the City of Portland, Oregon's Parks and Recreation Department's (PP&R) Pest Management Program (March 1997), including its Waterways Pest Management Policy dated April 4, 1999 provided that:

(i) Use of only the following chemicals is included within this limit on the take prohibitions: Glyphosphate products, Garlon 3A, Surfactant R–11, Napropamide, Cutrine Plus, and Aquashade.

(ii) Any chemical use is initiated in accord with the priorities and decision processes of the Department's Pest Management policy (March 27, 1997).

(iii) Any chemical use within a 25 ft (7.5 m) buffer complies with the buffer application constraints contained in PP&R's Waterways Pest Management Policy (April 4, 1999).

(iv) Portland Parks and Recreation Department will regularly assess whether monitoring information, new scientific studies, or new techniques cause it to amend the program or change the list of chemicals covered by this limit on the take prohibitions. Before NMFS approves any change to qualify as within this limit on the take prohibitions, NMFS will publish notification in the **Federal Register** providing a comment period of not less than 30 days for public review and comment on the proposed changes.

(v) On a regular basis, NMFS will evaluate the effectiveness of the program in protecting and achieving habitat function commensurate with conservation of the listed salmonids. If it is not, NMFS will identify ways in which the program needs to be altered or strengthened. Changes may be required if the program is not protecting desired habitat functions, or where even with the habitat characteristics and functions originally targeted, habitat is not supporting population productivity levels needed to conserve the ESU. If PP&R does not make changes to respond adequately to the new information, NMFS will publish notification in the **Federal Register** announcing its intention to impose take prohibitions on activities associated with the program. Such an announcement will provide for a comment period of not less than 30 days, after which NMFS will make a final determination whether to subject the activities to all section 9 take prohibitions.

(vi) NMFS' approval of amendments shall be a written approval by NMFS Northwest Regional Administrator. Before this regulation becomes final, the Director of the Federal Register must approve the incorporation by reference of Portland's Parks and Recreation Department's Waterways Pest Management Program (March, 1997), including its Waterways Pest Management Policy dated April 4, 1999, in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of those documents may be obtained on request to NMFS, Protected Resources Division, 525 NE Oregon St., Suite 500, Portland, OR 97232-2737, or NMFS, Office of Protected Resources, 1315 East-West Highway, Silver Spring, MD 20910.

(12) The prohibitions of paragraph (a) of this section relating to threatened species of salmonids listed in § 223.102(a)(5) through (a)(9), (a)(14), and (a)(15) do not apply to urban development activities provided that:

(i) Such development occurs pursuant to city or county ordinances that NMFS has agreed in writing are adequately protective, or within the jurisdiction of the Metro regional government in Oregon, with ordinances that Metro has found comply with an Urban Growth Management Functional Plan (Functional Plan) that NMFS has agreed in writing are adequately protective. For NMFS to find ordinances or the Functional Plan adequate, they must address the following issues in sufficient detail and in a manner that assures that urban developments will contribute to conserving listed salmonids:

(A) Avoid inappropriate areas such as unstable slopes, wetlands, areas of high habitat value, and similarly constrained sites.

(B) Avoid stormwater discharge impacts to water quality and quantity, or to the hydrograph of the watershed.

(C) Require adequate riparian buffers around all perennial and intermittent streams, lakes or wetlands.

(D) Avoid stream crossings by roads wherever possible, and where one must be provided, minimize impacts through choice of mode, sizing, placement.

(E) Protect historic stream meander patterns and channel migration zones; avoid hardening of stream banks.

(F) Protect wetlands and wetland functions.

(G) Preserve the hydrologic capacity of any intermittent or permanent stream to pass peak flows.

(H) Landscape to reduce need for watering and application of herbicides, pesticides and fertilizer.

(I) Prevent erosion and sediment run-off during construction.

(J) Assure that water supply demands for the new development can be met without impacting flows needed for threatened salmonids either directly or through groundwater withdrawals, and that any new water diversions are positioned and screened in a way that prevents injury or death of salmonids.

(K) Provide all necessary enforcement, funding, reporting, and implementation mechanisms.

(L) The development complies with all other state and Federal environmental or natural resource laws and permits.

(ii) The city, county or Metro will provide NMFS with annual reports regarding implementation and effectiveness of the ordinances, including any water quality monitoring information the jurisdiction has available, an aerial photo (or some other graphic display) of each urban development or urban expansion area at sufficient detail to demonstrate the width and vegetative condition of riparian set-backs, success of stormwater retention and other techniques; and a summary of any flood damage, maintenance problems, or other issues.

(iii) Prior to determining that city or county ordinances or Metro's Functional Plan are adequate, NMFS will publish notification in the **Federal Register** announcing the availability of the ordinances or Functional Plans for public review and comment. The comment period will be not less than 30 days.

(iv) If new information indicates need to modify ordinances or Metro's Functional Plan that NMFS has previously found adequate, the city, county or Metro will work with NMFS to draft appropriate amendments and NMFS will use the processes of paragraph (b)(12)(iii) of this section to determine whether the modified ordinances or Functional Plan are adequate. If at any time NMFS determines that compliance problems or new information show that the ordinances or guidelines are not achieving desired habitat functions, or where even with the habitat characteristics and functions originally targeted, habitat is not supporting population productivity levels needed to conserve the ESU, NMFS will notify the jurisdiction. If the jurisdiction does not make changes to respond adequately to the new information, NMFS will publish notification in the **Federal Register** announcing its intention to impose take prohibitions on activities associated with that program. Such an announcement will provide for a comment period of not less than 30 days, after which NMFS will make a final determination whether to subject the activities to all ESA section 9 take prohibitions.

(v) NMFS approval of ordinances shall be a written approval by NMFS Northwest or Southwest Region Regional Administrator, as appropriate.

(13) The prohibitions of paragraph (a) of this section relating to threatened species of salmonids listed in § 223.102 (a)(12) (a)(13), (a)(16), (a)(17) and (a) (19) do not apply to non-federal forest management activities conducted in the State of Washington provided that:

(i) The action is in compliance with forest practice regulations implemented by the Washington Forest Practices Board that NMFS has found are at least as protective of habitat functions as are the regulatory elements of the Forests and Fish Report dated April 29, 1999, and submitted to the Forest Practices Board by a consortium of landowners, tribes, and state and Federal agencies. Before this regulation becomes final, the Director of the Federal Register must approve this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the report may be obtained on request to NMFS, Protected Resources Division, 525 NE Oregon St., Suite 500, Portland, OR 97232-2737, or NMFS, Office of Protected Resources, 1315 East-West Highway, Silver Spring, MD 20910.

(ii) All other elements of the Forests and Fish Report are being implemented.

(iii) Actions involving use of herbicides, pesticides or fungicides are not included within this exception.

(iv) Actions taken under alternate plans are not within this limit on the take prohibitions.

(v) Prior to determining that regulations adopted by the Forest Practice Board are at least as protective as the elements of the Forests and Fish Report, NMFS will publish notification in the **Federal Register** announcing the availability of the Report and regulations for public review and comment.

(vi) On a regular basis, NMFS will evaluate the effectiveness of the program in protecting and achieving habitat function commensurate with conservation of the listed salmonids. If it is not adequate, NMFS will identify ways in which the program needs to be altered or strengthened. Changes may be required if the program is not protecting desired habitat functions, or where even with the habitat characteristics and functions originally targeted, habitat is not supporting population productivity levels needed to conserve the ESU. If Washington does not make changes to respond adequately to the new information, NMFS will publish notification in the **Federal Register** announcing its intention to impose take prohibitions on activities associated with the program. Such an announcement will provide for a comment period of not less than 30 days, after which NMFS will make a final determination whether to subject the activities subject to all ESA section 9 take prohibitions.

(vii) NMFS approval of a regulations shall be a written approval by NMFS Northwest Regional Administrator.

[FR Doc. 99–33858 Filed 12–30–99; 8:45 am]

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Federal Register

Monday
January 3, 2000

Part III

The President

**Notice of December 29, 1999—
Continuation of Libyan Emergency**

Federal Register
Vol. 65, No. 1
Monday, January 3, 2000

Presidential Documents

Title 3—

The President

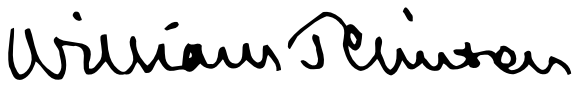
Notice of December 29, 1999

Continuation of Libyan Emergency

On January 7, 1986, by Executive Order 12543, former President Reagan declared a national emergency to deal with the unusual and extraordinary threat to the national security and foreign policy of the United States constituted by the actions and policies of the Government of Libya. On January 8, 1986, by Executive Order 12544, the President took additional measures to block Libyan assets in the United States. The President has transmitted a notice continuing this emergency to the Congress and the **Federal Register** every year since 1986.

The crisis between the United States and Libya that led to the declaration of a national emergency on January 7, 1986, has not been resolved. Despite the United Nations Security Council's suspension of U.N. sanctions against Libya upon the Libyan government's hand over of the Pan Am 103 bombing suspects, there are still concerns about the Libyan government's support for terrorist activities and its noncompliance with United Nations Security Council Resolutions 731 (1992), 748 (1992), and 88 (1993).

Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing the national emergency with respect to Libya. This notice shall be published in the **Federal Register** and transmitted to the Congress.



THE WHITE HOUSE,
December 29, 1999.

[FR Doc. 99–34074
Filed 12–30–99; 2:08 pm]
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- Maryland; published 11-3-99

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- Alabama; published 11-3-99
- California; published 12-3-99
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  - National priorities list update; published 1-3-00

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- National primary and secondary drinking water regulations—
  - Chemical and microbiological contaminants, analytical methods; and laboratory certification requirements revisions; published 12-1-99

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  - 218-219 MHz services; licensing issues; published 11-3-99
- Private land mobile services—
  - 700 MHz band; Federal, State, and local public safety agency communication requirements through Year 2010; published 11-4-99

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HEALTH AND HUMAN SERVICES DEPARTMENT

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- Boeing; published 11-26-99

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- Labeling of drug products (OTC)—
  - Standardized format; published 1-3-00

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

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- Rental voucher and certificate programs (Section 8)—
  - Management assessment program; technical amendment; published 12-3-99

INTERIOR DEPARTMENT

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- California Bighorn Sheep; published 1-3-00

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- Recipient auditors; debarment, suspension, and removal; published 12-2-99

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- Agency records centers; storage standards update; published 12-2-99
- Agency records centers; storage standards updates
  - Correction; published 12-9-99
- Federal records storage; records creation, maintenance, and disposition; published 12-2-99

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Federal Aviation Administration

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  - Boeing Model 767-400ER airplane; published 12-1-99
  - Dassault Aviation Falcon Model 20-C5/-D5/-E5/-F5 airplanes; published 12-3-99

TRANSPORTATION DEPARTMENT

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  - Center line and edge line markings; published 1-3-00

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***MISSING*!**

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Onions (Vidalia) grown in—
- Georgia; comments due by 1-12-00; published 12-13-99

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Farm Service Agency

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- Farm loan programs account servicing policies; servicing shared appreciation agreements; comments due by 1-10-00; published 11-10-99

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- Farm loan programs account servicing policies; servicing shared appreciation agreements; comments due by 1-10-00; published 11-10-99

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National Institute of Standards and Technology

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LIST OF PUBLIC LAWS

Note: The List of Public Laws for the first session of the 106th Congress has been completed and will resume when bills are enacted into law during the second session of the 106th Congress, which convenes on January 24, 2000.

A Cumulative List of Public Laws for the first session of the 106th Congress will be published in the **Federal Register** on December 30, 1999.

Last List December 21, 1999.

CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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Title	Stock Number	Price	Revision Date
1, 2 (2 Reserved)	(869–038–00001–6)	5.00	[5] Jan. 1, 1999
3 (1997 Compilation and Parts 100 and 101)	(869–038–00002–4)	20.00	[1] Jan. 1, 1999
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1–100	(869–038–00158–6)	14.00	July 1, 1999
101	(869–038–00159–4)	39.00	July 1, 1999
102–200	(869–038–00160–8)	16.00	July 1, 1999
201–End	(869–038–00161–6)	15.00	July 1, 1999
42 Parts:			
1–399	(869–034–00161–1)	34.00	Oct. 1, 1998
400–429	(869–034–00162–9)	41.00	Oct. 1, 1998
430–End	(869–034–00163–7)	51.00	Oct. 1, 1998
43 Parts:			
1–999	(869–034–00164–5)	30.00	Oct. 1, 1998
1000–end	(869–034–00165–3)	48.00	Oct. 1, 1998
***44**	(869–038–00167–5)	28.00	Oct. 1, 1999
45 Parts:			
1–199	(869–038–00168–3)	33.00	Oct. 1, 1999
200–499	(869–034–00168–8)	14.00	Oct. 1, 1998
500–1199	(869–034–00169–6)	30.00	Oct. 1, 1998
1200–End	(869–034–00170–0)	39.00	Oct. 1, 1998
46 Parts:			
1–40	(869–034–00171–8)	26.00	Oct. 1, 1998
41–69	(869–034–00172–6)	21.00	Oct. 1, 1998
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*500–End	(869–038–00180–2)	15.00	Oct. 1, 1999
47 Parts:			
0–19	(869–034–00180–7)	36.00	Oct. 1, 1998
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50 Parts:			
1–199	(869–034–00199–8)	42.00	Oct. 1, 1998
200–599	(869–034–00200–5)	22.00	Oct. 1, 1998

Title	Stock Number	Price	Revision Date
600–End	(869–034–00201–3)	33.00	Oct. 1, 1998
CFR Index and Findings Aids	(869–038–00047–4)	48.00	Jan. 1, 1999
Complete 1998 CFR set		951.00	1998
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Subscription (mailed as issued)		247.00	1998
Individual copies		1.00	1998
Complete set (one-time mailing)		247.00	1997
Complete set (one-time mailing)		264.00	1996

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[5] No amendments to this volume were promulgated during the period January 1, 1998 through December 31, 1998. The CFR volume issued as of January 1, 1997 should be retained.

[7] No amendments to this volume were promulgated during the period April 1, 1998, through April 1, 1999. The CFR volume issued as of April 1, 1998, should be retained.

[8] No amendments to this volume were promulgated during the period July 1, 1998, through July 1, 1999. The CFR volume issued as of July 1, 1998, should be retained.

TABLE OF EFFECTIVE DATES AND TIME PERIODS—JANUARY 2000

This table is used by the Office of the Federal Register to compute certain dates, such as effective dates and comment deadlines, which appear in agency documents. In computing these dates, the day after publication is counted as the first day.

When a date falls on a weekend or holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

DATE OF FR PUBLICATION	15 DAYS AFTER PUBLICATION	30 DAYS AFTER PUBLICATION	45 DAYS AFTER PUBLICATION	60 DAYS AFTER PUBLICATION	90 DAYS AFTER PUBLICATION
January 3	January 18	February 2	February 17	March 3	April 3
January 4	January 19	February 3	February 18	March 6	April 3
January 5	January 20	February 4	February 22	March 6	April 4
January 6	January 21	February 7	February 22	March 6	April 5
January 7	January 24	February 7	February 22	March 7	April 6
January 10	January 25	February 9	February 24	March 10	April 10
January 11	January 26	February 10	February 25	March 13	April 10
January 12	January 27	February 11	February 28	March 13	April 11
January 13	January 28	February 14	February 28	March 13	April 12
January 14	January 31	February 14	February 28	March 14	April 13
January 18	February 2	February 17	March 3	March 20	April 17
January 19	February 3	February 18	March 6	March 20	April 18
January 20	February 4	February 22	March 6	March 20	April 19
January 21	February 7	February 22	March 6	March 21	April 20
January 24	February 8	February 23	March 9	March 24	April 24
January 25	February 9	February 24	March 10	March 27	April 24
January 26	February 10	February 25	March 13	March 27	April 25
January 27	February 11	February 28	March 13	March 27	April 26
January 28	February 14	February 28	March 13	March 28	April 27
January 31	February 15	March 1	March 16	March 31	May 1